

## Comments on Hugh Lynch's Paper: Strategic Imperatives: Economic Warfare at Sea

By  
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### General Assessment: Economic Warfare at Sea

#### Introduction - Perspectives.

**Approach.** Approaches to law that are evolving in a sequence of ambiguous, dynamic situations vary according to the purposes of inquiry.<sup>1</sup> McDougal and his associates have led us to fruitful inquiry by advising that regardless of the tactics of approach, the most productive viewpoint is that of the detached observer. This vantage point provides us with distance from law whose prescriptive strength is tentative. It enables us objectively to sort out the claims among contending prospects for rule in those situations where the certain decisions to be treated as law are still in stiff competition with the claims of policy. This situation prevails with economic warfare where the vague but telling claims of policy, like those of "necessity" or in the vernacular of "extenuating circumstances," are readily raised. States from time immemorial have resorted to fashioning and using strategic instruments of policy, so that it comes as no surprise that the economic instrument used in belligerency will be accompanied by diplomatic and ideological as well as military instruments.<sup>2</sup>

Klaus Knorr provides a background to the position taken in this paper:<sup>3</sup> When modern belligerent states practice economic warfare,

they seek to reduce each other's economic base of military (and economic) power relative to their own. In these cases, economic warfare *supplements* military action as a means to coerce or simply to overwhelm or resist an adversary. But the immediate purpose of economic warfare is then not coercive. It is rather to weaken the economic foundation of the enemy's power. Military action can, of course, be applied toward destroying the economic sinews of the opponent's military strength. Naval blockades can sever trade, and bombing from the air and sabotage on the ground can destroy factories, shipyards, rail transport, etc. [pp. 133-134].

Knorr concludes:

In practice, the effectiveness of economic warfare is difficult, if not impossible, to measure, since the economic policies involved are usually only one factor, and certainly not the weightiest, in determining the outcome of war. Regarding World War II, economic warfare hardly caused the downfall of Germany and Japan, though it contributed to their eventual collapse. And the contribution it

did make surely resulted overwhelmingly from *military* measures of economic warfare, from naval blockade, and especially, in the case of Germany, from aerial bombardment.<sup>4</sup>

The processes of claim, applicable alike to firming policy and law, are operative in state practice during peace and belligerency.<sup>5</sup> Such processes actively lead to the expected patterns of behavior in warfare.<sup>6</sup> They have been notably affected by changing attitudes and expectations, changing tolerances, regarding the targets and acceptable destruction of hostilities, and in that sense alone they have led to law that has had a humanitarian character and moderating effect. But from the mid-19th Century, and particularly in recent years, state practice has introduced directly the humanitarian concern with non-combatants. Because so much of this concern has led to new law, and because belligerency itself through state practice is the determinative arena in which new law is applied, the extent to which such moderation has an impact in the law-making sense must await future hostilities.

Accordingly, a variety of approaches can be considered for an inquiry into economic warfare at this time.<sup>7</sup> Following McDougal it can be comprehensive, and for present purposes, the comprehensive approach already taken by McDougal and Feliciano will be taken as sufficient.<sup>8</sup> Approaches may in a sense be an attempt at codification, where the inquiry seeks to refine or increase the body of hard law, or it may be concerned with general principles, or operational in the sense that direct "hands-on" advice is proposed to the audience. The approach taken here draws on the operational factor, but is aimed at a primary point of assessment: the inquiry is directly concerned with whether we are witnessing trends, substantially revived during the second World War, of attacking the entire economy of a nation as a strategic, and legitimate, target of warfare.<sup>9</sup> This trend is bolstered by the recent desert war against Iraq – the attack was launched against the political and working infrastructure of the nation to bring about a quick termination to the fighting, and this meant attacks on targets that were essential to the economy as a whole as well as to the economy of war fighting.<sup>10</sup> Once the target of economic war is the economy, then the measures of economic warfare tend to be blurred, combining the traditional use of economic measures and military measures.<sup>11</sup> At least part of this trend was signalled by the advancing military technology, and the appearance of submarine warfare.<sup>12</sup>

**Perspectives.** The traditional instruments of war are designed to coerce others by force or threats to resort to force through arms. The legal regulation of the use of force and of military forces in particular expressed as the law of war is notable for general principles that leave open the emergence of law consistent with the tolerances of states as to what they accept as legally permissible.

While this inquiry addresses economic warfare particularly during the belligerency of states, the grand strategy within which economic instruments are

used to advance policy ultimately must govern.<sup>13</sup> A nation without long-term goals and perspectives concerning the future of global order stands to suffer and ultimately to decline. A democratic state handicapped by leaders that lack strategic vision and are caught up in the rough and tumble of domestic politics is not readily attuned to the elements of strategy, let alone its critical vocabulary.

The fundamental elements of policy that is dependent upon coercion, lodged in deception, surprise, and the manipulation of the participants in policy have their counterparts both in times of "war" and "peace", but the resort to these factors, even the resort to covert warfare, is often repugnant to the democratic perspective. Uncertainties over the balance of power and its cultivation, and over equilibrium associated with the element of "peace" are aggravated by such a state in its democratic processes. Because the formulation and promotion of a grand strategy is so difficult, the recourse to economic warfare as an instrument of policy or strategy tends toward a policy vacuum. But this it seems must be accepted as a given.<sup>14</sup>

The conduct of warfare amounts to a resort to intense coercion, and among the modalities that have emerged are the attacks that are strategic in nature, aimed at the economies as well as the traditional attacks aimed at the economic activities of an enemy. Armed force symbolizing capability to exert power, capacity to defend, and even in threat, intention to influence is the familiar military instrument, intended to exert coercion of high intensity, and expected to achieve military and political objectives. Hence economic warfare is likely to be accompanied by armed force or conducted in parallel with the use of armed force.

Traditionally, economic warfare imposed through naval forces has relied on blockade, and found it effective in bringing an earlier termination to the war.<sup>15</sup> With the rise of strategic weapons and the tolerances among states relating to strategic warfare appearing in the second World War, naval forces can be expected to serve in future wars with other military forces in conducting warfare aimed strategically at immobilizing an enemy's economy.

The law applicable to economic warfare has therefore developed in the context of the law of war, and against the expectations about future wars.<sup>16</sup> The decades following the second World War have been decades of growing expectations that coercion will be invoked, and once commenced rising to coercion of the highest intensity, and therefore at highest level of tolerance. Law under these conditions is law that adapts to changing methods of warfare, and also to a growing tolerance that makes new methods of economic warfare tolerable and legally permissible. Moreover, because those who use force also rely upon judgmental standards some of which are embodied in the "Principles of War", these standards show a similar flexibility as states move toward new weapons, methods of attack and military technologies.<sup>17</sup> The fundamental principle is that in which they seek an application of economies in the use of

force. This is in a sense forced upon them, because they are dealing here with scarce resources and costly destruction.

So before commencing war, states that consider their actions with some deliberation also turn toward judgmental standards in which intense, and often costly and high risk coercive measures are not invoked unless persuasive or less intensive coercive actions are first considered or taken. Nevertheless, because warfare is a matter whose outcomes are speculative state practice, founded on state perceptions of the high costs and destruction involved, it is particularly aimed at invoking the coercive and usually forcible instruments at early stages to gain the strategic advantage and tactical features of surprise, shock, deception, and disabling initial attacks. Strategic advantage is sought as a major auxiliary goal because it offers an economy in the use of force, and pursuit of objectives through force.

The policy and policy making of states across the spectrum of their relations with each other thus shift also across the coercive instruments needed exclusively for deterrence [relatively few if these are the major nuclear weapons] to those that will be needed for armed combat, particularly where that may turn out to be combat of long duration, and extensive use of resources.

The design and effective use of the military instrument and the other instruments of war are of great interest to policy-makers and the military commander. The pressure to choose against scarce resources tends in practice to reduce the assets available for blockades, particularly where the enemy states have formidable naval forces on each side to contend with. Hence a crucial test is that of military utility. Additionally, both commander and statesman seek to conform to community standards manifested in international law about the making of war, and about the permissibility in using the instruments of force, because resort to war entails the political element. A strong vision of war must encompass the policies and actions to be taken once the war has terminated. Both commander and statesman seek to have instruments that can operate effectively and speedily, with economy and efficiency. The fundamental objective, reciprocated with rivals and enemies and allies, is to achieve military objects, and ultimately political objectives, with a minimum destruction of values subjected to violence and destruction.

Although the instruments of coercion may also be designed for peacetime use, or invoked in strategies prior to going to war, they are primarily used for conducting war and reaching successful conclusions to war, and also for strengthening law among states, and for achieving policy goals that states must achieve for their own well-being. The framework for inquiry into the instruments of coercion is surmounted by the fundamental claim of all social orders: where all else fails, or where no other instruments are available or at hand, they are compelled to resort to self-help in the extreme cases to assure their survival.

The effectiveness of these instruments is measured by how closely they attain military and political objectives. Accordingly, they must be used within the standards imposed or accepted by the global community. Their effectiveness as instruments of war is largely determined by their efficiency and economy in use, but they are also determined by their operation consistent with community standards. Because the instruments of war are instruments intended for action, their effectiveness is determined by correlation in terms of action, but actions claimed by states are intimately tied to both policy and law. "War," according to Clausewitz, "is simply a continuation of political intercourse, with the addition of other means."<sup>18</sup>

The assessment of economic warfare is, necessarily, an assessment that touches the interaction of claims to self help, and in particular self-defense, with the satisfaction of customary international law and United Nations Charter obligations, and the rights and responsibilities of neutrals. It inevitably leads into perspectives about global order. The rise of the peacekeeping and maintenance of order instruments under the United Nations can be attributed to new perceptions about the use of force, to wit, the permissible use or threat of use, or the use of force to counter prospective aggression, all in the context of achieving global order, and shifting toward collective action. But the fundamental assessment involves the perspective regarding self-help – and thus self defense – and the use of force and coercion. Even in the collective forms of action for enforcement or maintenance of public order, states have simply turned to collective self-defense or concurrent or synchronous actions of self defense under another guise.<sup>19</sup>

Economic warfare and its instruments are judged by the same standards as are the military instruments, and the use of economic warfare as instruments of coercion are judged under the standards to be found in the law of war.<sup>20</sup> Although economic warfare may tend toward low degrees of coercion, a response by way of force [assuming a response directly asserted to economic measures and not to forcible measures] may need to be weighed against whether it would be proportionate to the force used, or force needed to retaliate.<sup>21</sup> But it is of critical importance that we recognize that the use of retaliatory force is appraised in the context of public order, self-defense, the practice and custom of states, and other indicia of their expectations.<sup>22</sup> When states turn to strategic economic warfare, it is evident that circumstances of intensive violence are introduced affecting the attitudes both toward law and leading to the tolerances about the conduct of warfare of that nature. Apart from this, the strategies of economic warfare, and the separate strategies of reaching strategic goals are comparable in most respects to those involving the use of force through military means.<sup>23</sup> Additionally, they are strategies that include the variations employed by other strategies: for example, reprisals, a form of self help, are applied through

economic warfare, and reprisals are adopted both by the belligerents and the neutral states.<sup>24</sup>

### Self-Help and Self-Defense

To assess the emerging law of economic warfare, the overall framework of self-help must be briefly sketched. Self-help, like the overriding conditioning factor of necessity, operates in the primordial relations among states. In warfare under the present military technologies, expectations universally anticipate comprehensive and high intensity violence that is not controllable under law or other social processes under the familiar principles and standards. Moral principles, and the principle of war relating to humanity tend to shift toward a vanishing point when violence is intensified. Violence opposed by violence leads to the naked application of necessity. But the complementary principles that provide controls are intended even in wars of high intensity violence to resonate between the application and mutual moderation of the impact of principles of humanity and necessity.<sup>25</sup> These are principles readily adopted by all states, and they are actively operational even in the most violent conflicts.

But the two principles mentioned operate to control the conduct of hostilities themselves. Surmounting the operation of the two principles is the larger, constitutive goal that some states seek more fervently than others. This goal is that of first achieving minimum public order, building on the existing public order in any event, to determine the permissibility or legitimacy of their actions. Some states, as with Hitler's Germany and Stalin's Russia, were committed to public order, but it was intended to be a public order that they would control and dominate. Thus the belligerency may be about the constitutive elements of public order itself: the struggle may be for a public order configured with the values of one belligerent rather than another. These differing perspectives about global order affect the perspectives of the enemy states about the law applicable to their conflict. But in all conflicts, it is evident that the belligerents are involved in a struggle for strategic supremacy – a more limited goal, but ultimately to be fleshed out with a claim for public order, achieved if need be through coercion, or war. They may be involved in a struggle for resources.

The notion that weapons may be distinguished and some identified as "offensive" and some as "defensive" is under the best of circumstances ambiguous, and not a principle that controls the use of weapons. Military doctrine distinguishes offensive and defensive warfare, but the military commander, for reasons of exigency or choice, will use those weapons he believes will achieve the military object. That object involves the military attack, acquisition of enemy positions or territory, or destruction of enemy forces, positions, capabilities or logistics.

Self defense does not escape the element of normative ambiguity: the facts and applicable norms are facts that may be difficult to adduce at the time of action, and norms or law that is expressed in general terms as is found in the United Nations Charter. There are no common law courts to work through a practice and tradition to make these fully manageable either as sources or the control of law. Accordingly, much depends upon judgment and the reasonable exercise of discretion. Rules of engagement, principles relating to the introduction of force, principles concerning the just war, and principles relating to reprisals have in common check points for the commander or decision maker. They are not compulsory but are only aids to the stages employed in exercise of discretion or judgment.<sup>26</sup> Acts to use force have decisional components and appear in analysis as a stream or flow of decision; hence going to a court to have it rule with finality about an element in the decision has an element of unreality that ignores the "fog of war."<sup>27</sup> It runs counter to the development of law from dynamic situations and aimed at future dynamic situations. Law for such purposes tends to develop against a larger array of facts to some extent similar to those that the legislator must face.

### Neutrality, The Public Order and Belligerency

The perspectives of states in their recourse to the use of force fall within the framework of attitudes toward coercion.<sup>28</sup> These perspectives have been amply considered by other commentators.<sup>29</sup> The fundamental perspective is concerned with the protection of the existing public order, or toward the promotion of public order for the future that will afford greater security. This perspective is adopted in the claims of all participants during belligerency, including neutrals.<sup>30</sup> The interaction of the issues of economic warfare with these objectives raise a variety of problems in blockade, contraband, belligerent occupation [for economic purposes as well as for political purposes, or strategic purposes], and the expanding right of angary.<sup>31</sup> Resort to reprisal, a separate but subordinate instrument of coercion, is subject to the same policy considerations. It is an instrument under which agents of warfare, or methods of warfare, otherwise impermissible, are permitted in response to the first use of such agents or methods by the enemy.<sup>32</sup>

The claims relating to neutrality have a direct bearing upon economic warfare: belligerents that claim a right to interfere with or stop the flow of goods from neutrals raise issues as to the neutral behavior of states that are not participating in the conflict. Differences relating to the policy of neutrality have led to qualifications regarding the neutral's position. McDougal and Feliciano refer to a variety of terms, conveying a variety of policy implications, now adopted to refer to neutrality. They mention "non-belligerency," "status of nonparticipation,"

"absolute neutrality," "differential neutrality," "qualified neutrality," "benevolent neutrality," "permanent neutrality" and so on.<sup>33</sup>

States insisting that they are neutral have adopted terms of this nature because they have perceived a change in the nature of belligerency in current practice: states that they believe to be aggressors are not entitled to the full benefits of neutrality, so that they decide for themselves that certain freedoms will be taken with regard to the application of the laws otherwise restraining neutrals in their trade. But the larger impact of perspectives also applies: the neutral states are claiming the inclusive rights of states to all of the freedoms of the use of the seas and perhaps of air space [and in the future outer space], while the belligerents are claiming the exclusive rights to enclose areas of the seas and so on in which they will be conducting hostilities and as to which they will not be responsible for harm or damage caused to those that are not so engaged.

It is evident that the changes in perspectives have an impact upon what is tolerated, and thus upon the emerging law relating to neutrals. So the bases of power of the states involved are significant factors. McDougal and Feliciano appropriately quote from the Norwegian historian, Orvik to this end:

The outcome of the struggle to establish such a *modus vivendi* [between belligerents and neutrals] has at all times been entirely dependent upon the economic and military strength, the strategic position and the perspicacity and persistence of the two sides. In short, the rules of neutrality are products of two forces pulling in opposite directions, the final result being determined by the relative bargaining power of the parties.<sup>34</sup>

In the comprehensive framework adopted by the two authors, the strategies for asserting and protecting the claims of the two sides, and the conditions under which the claims are made are adduced. Among the conditions mentioned are the differing demands and perspectives about global order and its future, the character and technology of violence, particularly with the appearance of the thermonuclear weapons, and the economic and social values of the various participants that form the major stakes.

Additionally, the context of the claims process is considered. Questions raised include those such as the authority of a minimum order to be shared by all sides and from which authority relating to hostilities and regulation of those hostilities emanates; how minimum order is implemented to achieve international security in the interests of all states in the global community; and questions relating to the expectations of states about the effectiveness of collective security. These questions are important in the context of the applicable law, and in appraising the changes occurring in the "traditional" law. States are believed to share common objectives toward reaching minimum order, and toward minimizing the destruction of values. These perceptions appear in turn in their law, in such concepts as the principle of military necessity.<sup>35</sup>



In invoking the instruments of war, states, in general, seek to satisfy the law of war. Not only must the instruments satisfy the existing community standards, but because the policies they embody are future-oriented they are likely to contain expectations of an emerging law. The logic of the changing law is to be found in the gradual growth of global public and legal order, so that neutrality is subordinated to the expectations that a public order hostile to aggression will be served. This was the logic adopted by the Attorney-General of the United States in defending the neutrality position of the United States favoring the allies against Hitler:

It is the declared policy of the Government of the United States to extend to England all aid "short of war." At the same time it is the declared determination of the government to avoid entry into the war as a belligerent. . . . Events since the World War [World War I] have rejected the fictions and assumptions upon which the older rule rested [i.e., the rules of the Hague Convention on Neutrality]. To appreciate the proper scope of that doctrine of impartial neutrality we must look to its foundations. Its cornerstone is the proposition that each sovereign state is quite outside of any law, subject to no control except its own will, and under no legal duty to any other nation.<sup>36</sup>

The United States put forward a new category "in which certain acts of partiality are legal even under the law of neutrality."<sup>37</sup> This introduces a new perspective into the law of force. An international breach of the peace under this view is a matter that concerns all states in large measure because they have adopted a global organization and a global process to achieve global order that reflects their community.<sup>38</sup> But Jackson's perspective makes it a right of all states to act with force if they can show that they are involved in the maintenance of international peace and security, and that global or collective efforts to do this were unavailing.<sup>39</sup> It entails the element of the "just war" – a notion that is linked to the public social and legal order.<sup>40</sup> Moreover, this is a perspective that contains higher expectations of law, and the legal and global order than we have of the behavior of states and their elites. In any event, his claim can fall back on necessity, the conditioning factor as to all international law, and upon which states are compelled to rely when their order breaks down.

Jackson thus joined those who supported a higher degree of freedom for the policies and decisions of states that claimed they were neutrals, enabling them to take actions that in an early tradition would have made them belligerents.<sup>41</sup> Jackson found that the neutral state must meet the higher law requirements of the public order itself:

A system of international law which can impose no penalty on a law-breaker and also forbids other states to aid the victim would be self-defeating and would not help even a little to realize mankind's hope for enduring peace.<sup>42</sup>

Additionally, this is a concern with the permissibility or lawfulness in resorting to coercion, whether that coercion be exercised by military measures, or by economic instruments as considered here, or otherwise.<sup>43</sup> The naval officers and those in their line of command as servants of their governments have similar concerns. The uncertainties of law and the appearance of law often in a formative stage make the issue of permissibility a complex one, so that all states, belligerents and neutrals alike, traditionally claiming a wide degree of independence, or absolute "sovereignty", particularly during belligerency, tend to claim that the law is controversial and that their actions are lawful.<sup>44</sup>

Secretary of State Kellogg observed in connection with neutrality and the Kellogg-Briand Pact that we would not abandon our claims to self-defense, so that responses to aggression became the basis of global standards regarding the use of force:

There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action. . . . Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.<sup>45</sup>

Kellogg caught many of the main themes of community principle: self-defense was an inherent right among states never to be suspended and preserved under overriding customary international law; definitions of self-defense were self-defeating because the subjectivities of states in their perceptions of aggression targeted against them tend to be overriding yet unique; wars were not eliminated by documents such as the Pact but only shifted to issues of aggression, and so on.<sup>46</sup>

Section 233 of the United States Navy manual, the Law of Naval Warfare, declared that states may relinquish their claims to neutrality when they enter into security agreements:

The right of individual and collective self-defense established by the Charter of the United Nations may be implemented by regional and collective self-defense arrangements. Under these arrangements the possibility of maintaining a status of neutrality and observing an attitude of impartiality depends upon the extent to which the Contracting Parties are obliged to give assistance to the regional action, or in the case of collective self-defense, to the victim of an armed attack. The principal effect of regional and collective self-defense arrangement is to transform the *right* of the parties to assist that State suffering from an armed attack into a *duty* to assist a State attacked.<sup>47</sup>

And the overriding impact of the discretionary element exercisable when threats intensified was noted by the American writer, Hyde:

Realization of the fact that under certain conditions non-belligerent states may be disposed, for good or bad reasons, to ignore what the law of neutrality may normally exact is perhaps of greater importance to the members of the international society than close appraisal of what the law of neutrality as such permits or forbids a neutral to do with respect to the conflict that is waged around it.<sup>48</sup>

Economic warfare strategy partakes of general military and maritime strategy. Reliance on economic warfare to supplement other methods of warfare has been largely vested in the maritime states, but this is likely to change as states turn to strategic bombing for destroying each other's economy. But generally speaking there is a distinction between land and sea powers:

. . . there is an enduring geopolitical difference between land and sea that affects importantly how man thinks about his natural habitat, the land, and an environment that is fundamentally hostile to him, the sea. The natural condition of the land is to be politically controlled. . . . The natural condition of the sea, in sharp contrast, is to be uncontrolled.<sup>49</sup>

The maritime strategy of the United States has evolved over the years with changes in perspectives, in national interests and goals, and in the needs of the nation with regard to its relations with other states, especially allies. But a set of common themes prevail in all of the versions: the major task in command of the sea remains the protection of communications, a defensive task, and maintaining control of the sea for the protection of the nation, an offensive task. The notion, often advanced as propaganda and ideological strategy, that there are differences between weapons, some of which are identified as offensive and some defensive, thus becomes meaningless when states are engaged in actual combat.<sup>50</sup> The differences are those of the military commander's action and intention, and he may use the same weapon for either purpose:

Elimination of offensive naval force from the National Military Establishment would permit us only a limited use of the seas at the cost of continued, unremitting, defensive efforts, and it would completely destroy the capability which we now possess of using the seas for offensive operations and as an area under our control from which to project and establish elements of the army and air force on the Eurasian continent. The elimination of offensive naval power throws away at one stroke a major component of our greatest strategic asset which is our capability of exploiting the elements of mobility, concentration, surprise, and economy of force.<sup>51</sup>

This position was not changed by subsequent reports by authorities in charge of naval forces. Stress was given to new elements such as strategic deterrence,

but sea control and projection of sea power remained, and these are strategies that cross over the strategies of economic warfare. To achieve those ends, a maritime state needed to have superiority in naval force whether for sea control, power projection, strategic deterrence, or combat. It would demand flexibility to reach new threats to the maintenance of stability and to the containment of crises. The forces themselves could not rely on a substantial reserve of forces, hence they required a readiness in being. Admiral Watkins remarked:

Perhaps most importantly, naval forces have unique escalation control characteristics [a major element of deterrence and prevention] that contribute to effective crisis control. Naval forces can be intrusive or out of sight, threatening or non-threatening, and easily dispatched but just as easily withdrawn. The flexibility and the precision available in employing naval forces provide escalation control in any crisis, but have particular significance in those crises which might involve the Soviet Union.<sup>52</sup>

The strategy of the Soviet Union, according to the Department of Defense, is said by the Soviet spokesmen to be a strategy of military sufficiency. A major shift in Soviet strategy is said to have occurred, because the stress is upon the decision and upon the political dimension and no longer a military strategy [whatever that means]:

Security in the nuclear age must be evaluated differently. Assessing security is more and more becoming a political task. It can only be resolved by political means through detente, disarmament, strengthening confidence, and developing international cooperation.<sup>53</sup>

Maritime strategy, through rules of engagement and through doctrine, interacts with law and policy, each affecting the others. A nation's strategy, doctrine and statements about the military art might thus be combed for its attitude toward law, particularly because that attitude must determine what the perspective about the legal order itself will be. The United States maritime strategy in its most recent version was placed by Admiral James D. Watkins into the larger context of the national military strategy:

Our national military strategy is designed: to preserve this country's political identity, framework, and institutions; to protect the United States, including its foreign assets and allies; to foster the country's economic well-being; and to bolster an international order supportive of the vital interests of this country and its allies. To achieve these ends, our national strategy is built on three pillars: deterrence, forward defense, and alliance solidarity.<sup>54</sup>

This is a maritime strategy that is to be distinguished from our major rival, the Soviet Union, compelled by geography, military experience and predilection to adopt a land-based strategy. Watkins argues that the navy's importance tends

to grow during times of limited conflicts, providing, as it does, major support to the actions of the nation's strike forces. Hence there is a need for a versatile array of naval forces, and continuous adaptation to new methods of warfare and new targets calls for a navy commensurate with the nation's global interests.

Admiral Watkins' reference in his statement to the preservation of the nation's "economic well being" indicates the expectation that economic strategies of warfare promoting the nation's economic strength and weakening that of the enemy are among those that will be adopted and given major attention. And like the other strategies, effective economic warfare, and the capabilities to exercise such warfare, are aimed at deterrence – a major element in maintaining the well-being of the United States and its allies, and stability with others. Deterrence calls for costly investment in capabilities and readiness, yet it remains the key to what assurance we can have to prevent aggression. We are compelled to conclude that our naval forces call for independent assessment as to needs, missions and capabilities, and unlike most other armaments fail to lend themselves to arms control equilibria or the balancing among equals simply because the states involved have differing interests. It is possible, but subject to speculation, that the rules identified with arms control and which make it effective need to be adjusted.<sup>55</sup>

The law relating to economic warfare emerges from the practice and strategies of states with respect to the economic measures they have adopted, or the attacks they have mounted against the economy of the rival states.<sup>56</sup> This law is affected by the changing practice and perspectives among states with regard to belligerency and neutrality.<sup>57</sup> In both World Wars, the appearance of new methods of warfare had their impact upon neutrals, notably in the creation of war zones, the attitude and extent to which minefields were laid, and the claim of belligerents to sink at sight both enemy and neutral ships. With these changes in the law, states also tend to adopt new attitudes toward enforcing the law: reprisals, for example, for violations by belligerents of neutrality or reprisals by neutrals, are determined by the law itself, while reprisals are actions that affirmatively promote the law, and a changing or emerging law makes this a complex policy problem.<sup>58</sup>

Such changes also had their impact upon the judgements of the prize courts, and therefore to the law developed through the application of principles and judgment. But these courts have perspectives of their own, and for a period during the first World War some of these courts, under the leading prize court judges of Britain, attempted to fit the new practices into the existing law, and ultimately these cases facing the realities of change were overruled.<sup>59</sup> The problem that the prize court judges faced was summed up by Commissioner Nielsen in the *Oriental Navigation Company* (1928):

Custom, practice and changed conditions have their effect on international law as well as on domestic law. However, . . . a violation of law is not equivalent to a modification or abolition of law. The fact that new instrumentalities of warfare make it inconvenient for a belligerent in control of the sea in a given locality to act in conformity with established rules of law does not ipso facto result in a change of the law or justify disregard of the law.<sup>60</sup>

Economic warfare may involve methods that are accompanied by the use of force, or by the threats to use force, or they may be used with the intention that they are intended to persuade the enemy to take certain actions. During warfare, the economic strategies are usually accompanied by the use of force, and that use is appraised against the standards of military necessity, the responsibility of states to avoid unnecessary suffering, to avoid excess in the use of force, and therefore meet the standards of proportionality. Accordingly, the strategy of economic warfare may be assessed as to the legality of the strategy that does not resort to force or threats of force may be treated as an unfriendly act. In those situations, the state resorting to such a strategy has a far greater freedom to act, and far more discretion than does the state that resorts to force or threats of force.

State practice in World War I shows the impact of belligerent practice in changing the written, conventional or treaty law. The United Kingdom and other belligerents in that war set aside the Declaration of London. And the British Government through a series of Orders-in-Council adopted one that was aimed at justifying reprisals themselves.<sup>61</sup> The "reprisal orders" were said to be a response to German submarine attacks, and though not permissible under prevailing law were justified under special circumstances as an exercise of "an unquestionable right of retaliation."<sup>62</sup>

The same period provided us with state practice concerning the changes occurring in the prize courts relating to contraband and other issues relating to the modalities or tactics of economic warfare. This practice leads us to the realities of state application of law: belligerent states tend to find the law controversial, and therefore they are eased into interpretations to their own liking, and states involved in wars of highly intensified violence tend to find much of their law inoperative. We might expect that this may occur with the provisions of the United Nations Charter.<sup>63</sup>

Traditionally, economic warfare is perceived as conduct during armed combat – acts that supplement the military actions, whose law evolves from belligerent practice and hostilities. But such acts, though not usually referred to as economic warfare, occur during peacetime by way of reprisals or retorsion, and though both persuasive and coercive, do not depend upon the use of force. Examples of this kind might be found in the Cuban– Missile Crisis where the quarantine was adopted to avoid the stigma and functional features that would have made up a forcible blockade – prohibited under the United Nations Charter among states in peaceful relations. A further example may be found in the ambiguous

situations currently involving the United Nations stand against Iraq, where the economic sanctions are purportedly those directed by the Security Council of the United Nations, again short of war.

Economic strategies operable in peacetime have received less attention. Although such strategies may not require naval forces, the strategies themselves deserve brief mention. Where a nation's strategic bases of power include its assets and resources, its organizational base and the morale of that base, and the values they prize and commitments to those values, it is evident that economic persuasion and coercion in peacetime may be essential to shape a rival toward comparable values. The strategic element arises because states seek to deter, or to prevent, other states from becoming a threat, and because they can readily see the economic base of power becoming the base for other states to become a rival military power.<sup>64</sup> This perception imposed upon the current problems of the Soviet Union is recommended as a moderating element in the rush to assist that state before it shows the willingness and ability to shift toward democratic processes and institutions.<sup>65</sup>

Reprisals affecting neutrals invoked by the British during World War I, commencing with the Order-in-Council, March 11, 1915, are illustrative of the actions taken to restrict German trade and commerce. However, as Schwarzenberger has pointed out, reprisals, intended to promote lawful conduct may turn out to be altered when the belligerents take on themselves the standards of application:

In a language which applies as much to the application of indiscriminate reprisals as to the pleas before the British-United States Mixed Claims Commission, Commissioner Pinkney pointed out: "If a belligerent is empowered by the law of nations to seize the property of neutrals upon its own terms whensoever that belligerent shall believe or affect to believe that by such means its enemy may be annoyed or reduced, few nations would choose to remain neutral." Once discretion is exercised so widely, the alleged rule "will be applied in practice upon false as well as mistaken grounds."<sup>66</sup>

This was exactly what happened in both World Wars, and even neutral Powers which went to war for the revindication of the rights of neutrals, as belligerents swiftly changed their tune. Moreover, in both these wars, the major victorious Powers greatly benefitted from the law as they had shaped it and saw little reason why they should champion a return to the traditional law.<sup>67</sup>

Thus, the strategies of states in past armed conflicts, and in "peacetime" as well, have included the economic instrument: i.e., states may be able to reduce the financial or trade flow to rivals through effective measures in such institutions as the GATT or IMF. The strategies may therefore be aimed at either material resources or at services relating to the economic process or both. They may be unilateral or coalition strategies. While the stress here is economic warfare at sea,

particularly upon blockade, the strategies in the larger sense would include a variety of measures intended to weaken the economy.

According to Medlicott in the foremost study to the economic warfare carried on in the first World War, the "official definition" or conception of economic warfare adopted by the British Committee of Imperial Defence on July 27, 1939, extends beyond activities involving the goods or services of trade and commerce to the strategic targets that lie in the industrial base of the enemy, i.e., industrial facilities and even the working population that is employed by them:

The aid of economic warfare is so to disorganize the enemy's economy as to prevent him from carrying on the war. Its effectiveness in any war in which this country may be engaged will vary inversely with the degree of self-sufficiency which the enemy has attained, and/or the facilities he has, and can maintain, for securing supplies from neighboring countries, and directly with the extent to which (i) his imports must be transported across seas which can be controlled by His Majesty's ships, (ii) his industry and centers of storage, production, manufacture and distribution are vulnerable to attack from the air, and (iii) opportunities arise from interfering with exports originating from his territories.<sup>68</sup>

Medlicott noted that economic warfare is broad, expanding and flexible in nature, and includes "all economic activities which directly or indirectly further the war effort of a belligerent," and that this was the usage of the United States after Pearl Harbor.<sup>69</sup> He then pointed out:

Economic warfare is a military operation, comparable to the operations of the three Services in that its object is the defeat of the enemy, and complementary to them in that its function is to deprive the enemy of the material means of resistance. But, unlike the operations of the Armed Forces, its results are secured not only by direct attack upon the enemy but also by bringing pressure to bear upon those neutral countries from which the enemy draws his supplies. It must be distinguished from coercive measures appropriate for adoption in peace to settle international differences without recourse to war, e.g., sanctions, pacific blockade, economic reprisals, etc., since, unlike such measures, it has as its ultimate sanction the use of belligerent rights.<sup>70</sup>

In assessing the effects of the economic warfare, Medlicott noted the staying power of Germany in World War II, its use of resources from captive nations, its ingenuity in finding substitutes, but also the growing gap in production by the allies when production was compared with Germany. Nevertheless,

The picture was of an economy achieving with difficulty the demands of a supreme war effort, with too slight a reserve of human or industrial resources to achieve much more. Raw material shortage seemed to be the main handicap to economic expansion, and certainly the one most vulnerable to economic warfare attack; it was necessary, therefore, to relax none of the existing forms of pressure



on the neutrals, and also to ensure that Germany found no escape from her difficulties by other means. . . .<sup>71</sup>

The strategies employed in war are affected by changes in the methods of warfare, the introduction of new military technologies, and by the appearance of new weapons.<sup>72</sup> These changes all have their effect on the law, because each of these must be assimilated under that law, or the law must render them impermissible. Moreover, neutrality itself has been affected, as is clear from the introduction to this paper, and that has in part been the result of the independent authority among states to determine when war has broken out [hence to determine its neutrality or other relations it might have with the hostile states], and which side might have been acting unlawfully [hence the determination of whether the “neutral” state can refrain from aiding the aggressor, or afford discriminatory and privileged support to its victim].

The strategy of economic warfare as set down by the British government suggests the growing magnitude of the strategy in a major war:

1. To prevent the two enemy dominions [Japan and German] from establishing economic exchange by blockade running; still more, of course, to prevent their opening regular communications by land or sea.
2. To develop the increased possibilities of economic pressure on the neutral border States adjacent to German Europe and on Vichy French colonies to the fullest extent which the military situation permits, with a view both to obtaining supplies and to denying to the enemy resources which are becoming more than ever essential to him.
3. To develop within occupied countries both in German Europe and in the Far East all forms of passive and active resistance to economic exploitation.
4. To develop methods for directing against the increasing weakness of Germany's war potential attack from the air which shall really be effective.
5. To devise combined operations against the most important accessible economic targets in enemy-occupied territory and against his lines of communication.
6. To defend important sources of supply and access to them, including the supplies of South America.<sup>73</sup>

Further complications arose after the major wars with the United Nations Charter, because the Charter provides for the Security Council to have primary – actually exclusive – authority with regard to matters relating to the maintenance of the peace, or with regard to aggression. Once seized of the matter and once it proclaims the enforcement decisions and actions to be taken, all members of

the United Nations will, unless excepted [which is unlikely], be included in support of the United Nations action.<sup>74</sup>

And other complications arise with the advent of the United Nations with regard to interpretation of critical language, such as that concerning "armed attack" as used in Article 51. Because war is outlawed, but aggression remains a reality, the states have been compelled to shift their vocabulary to fit aggression and self-defense into concepts for a regulatory process, and they have built upon their experience in formulating the laws of war. Here again the determination or appraisal of facts indicating an "armed attack" must be that of the victim state or the state that might be involved in what it claims to be a response by way of self-defense to an armed attack, subject to broad standards as to making that response, and the force that it is using.

Accordingly, we have seen the rise of new claims as to the policy or content of neutrality: non-belligerency, non-participation, and non-alignment, adding further ambiguity, functional in nature and in their differences, and indicating relationships with all or some of the belligerents not to be governed by the traditional rules of neutrality. The impact upon the tactics, or modalities, of economic warfare at sea has been felt, commencing with the renunciation during World War I of the application of the Declaration of London, 1909. Events had by then already indicated that new methods of warfare and new claims of the belligerents overrode the rules laid down in that Declaration. Had it remained in force, it would have led only to confusion about the standards that govern legitimate reprisals, and the tendencies clearly shown in the second World War for states to talk past each other, claiming reprisals and counter-reprisals to cover all of their attacks regardless of target and the force applied.

Changes occurred also in the geographical features that affected neutral states. The global reach of major wars led to the claims of states, separately and as part of the regional groupings, to freeing adjacent seas, extending far into the high seas, from the presence of belligerent naval vessels. This was illustrated in the Declaration of Panama in 1939.<sup>75</sup>

In addition to these political and legal implications, the strategies of economic warfare are determined by whether they rest upon coercive techniques or persuasive techniques, or mixtures of these, and they may be used concurrently or separately. But during wartime, the strategies are imposed primarily through coercive measures that include the concurrent resort to force or threat to use force. The law relating to coercive strategies or strategies that depend ultimately upon the use of force operates through the standards of reasonableness: necessity, proportionality in the use of force, attack on legitimate military objects.

Economic deprivation strategies such as those mentioned here may be refined substantially in the future so that they, operating under the familiar principle of economy of force [or of resources committed to actions against a rival], will become more effective. Further refinements may be expected to arise from

reaching deep into a rival's economy, attacking the industrial base, the logistics and transportation facilities, and even the civilian population engaged in military production. This was the expectation associated with city strikes during the second World War. Hence it is stressed here that these strategies affect the emerging law, giving it content, and they are assessed under the law relating generally to the exercise of coercion.

The "sources" of the law applicable to economic warfare include the customary international law, a law that is dynamic and is responsive to continuing change in state practice; treaties such as the Declaration of London, 1909,<sup>76</sup> that apply now only to the customary international law they embody; the various instructions and navy regulations;<sup>77</sup> law of war manuals and rules of engagement which, though not among the formal sources, are the evidence of the law, and reflect the practice of states.<sup>78</sup> General principles assimilated by the Prize Courts, to wit, the municipal courts designed to resolve issues relating to contraband or other non-neutral conduct of neutral states, may also be included. Documents and a careful inquiry into this subject is provided by such writers as Carlton Savage, with his two volume work for the Department of State extending into World War I.

While definitions of economic warfare have already been given, and none are universally accepted, it is evident that the conception to be usable must be functional. A general conception of economic warfare embodies measures taken to reach the economies of other states, is the outcome of strategies used by states to influence, alter or control the decisions or policies of an adversary or aimed at neutral states that might be providing economic assistance to an adversary. Such warfare, during armed combat, is supported or promoted by military measures, especially by the naval forces. The methods and strategies used are controlled under law, but they also promote or give policy content to the law, operating to make it effective. Whether perceived as a strategy by policy or decision makers in general in pursuing their goals, or as a strategy by the military force and especially the naval forces acting in the operational dimension of hostilities, economic warfare is judged under legal standards of reasonableness and effectiveness.

The law of economic warfare is a continuously emerging law, drawing upon the changes in the relations of states, upon the technologies that affect their war-fighting capabilities, upon the national power that underpins their strength, and upon the changes that are occurring in the conduct of hostilities. The strong trends in this law include the trends reflecting a changing law, changing with the belligerent practice among states, and the changes imposed through technology, and its impact upon the conduct of hostilities. These changing trends have shown their impact upon the law relating to contraband, the doctrines of ultimate voyage and continuous voyage, practice relating to navicerts and other administrative measures, and blockade.

Major studies have been concerned with domestic legislation alone: the history and emergence of neutrality in the United States, the legislation adopted, and the changes to that legislation trace political perspectives that replaced the notions of "neutrality" with "non-belligerence," "non-alignment," and so on. Such features as state-trading and the peculiar claim of exemption of such trading from the usual practice and law with regards to neutrals have gradually vanished as naval warfare became a global activity.<sup>79</sup> Where however the tendency might be to maintain the traditional law on the books, it is likely that the changes will be made either through resort to the claim of reprisals, or through outright violation of the law.<sup>80</sup>

According to Alford, economic warfare is "material resource" warfare.<sup>81</sup> He refers to such warfare as

. . . intentional disturbances of the flow of material resources among people and of the processes by which these resources are used to produce values. Under the rubric "modern economic warfare" are embraced such apparently disparate practices as the preemption of scientific knowledge and skill to deny them to an adversary and interferences with the transport of materials such as nuclear and biological weapons, not regarded as wealth in a conventional sense.<sup>82</sup>

Julius Stone has pointed out that the economic warfare and the expectations of states that engage in it have changed with the experience during conflict. Napoleon attempted to ruin Britain commercially by attacks on British maritime commerce, and did not succeed. He was faced with British naval power that made his efforts fruitless. The link was made by early commentators between maritime commerce and the need for a navy: Mahan is cited as an authority for the claim that without maritime commerce, there was no further interest for a nation to protect, hence no need for its navy. But Mahan was inconsistent in these views, because he subsequently discovered the need for naval power to reduce a rival's war fighting capabilities both at sea and in general. Shifts in perspectives ranged from those who claimed that economic warfare was to claim the wealth of a rival, and those who viewed such warfare as a strategic enterprise, affecting its war capabilities.

Some of the military changes appeared with the emergence of submarine and air warfare applied to maritime commerce as well as to its protection. Attempts here, under law to regulate such military actions, led to a general breakdown in the agreements relating to both, and states, though they tried in 1923 to reach a convention for air warfare, were unsuccessful, and none has yet been achieved. The demands of humanity were in large measure overridden by the demands of military necessity, as the attacks on the *Lusitania* and the *Sussex* were to show during the first World War. The Nuremberg Trial of Admiral Doenitz finding violations of law but refusing punishment was unable to clarify the matter. The Court said:

In view of all the facts proved and in particular of an order of the British Admiralty announced on May 8, 1940, according to which all vessels should be sunk at sight in the Skagerrak, and the answers to interrogatories by Admiral Nimitz stating that unrestricted submarine warfare was carried on in the Pacific Ocean by the United States from the first day that nation entered the war, the sentence on Doenitz is not assessed on the ground of his breaches of the international law of submarine warfare.<sup>84</sup>

Alford believes that economic warfare is waged during periods of "general military stalemate." The emerging perception however is that economic warfare may be characterized as a form of economic coercion, and the effectiveness of coercion may arise from the economic "disturbances" alone, or through the parallel or simultaneous exercise of military coercion. But Alford correctly perceives that coercive economic practices may be invoked during the lesser wars or hostilities of violence that has not reached the high intensity of a major war. Moreover, it may be an instrument that can be designed to vary the coercive element. The state invoking economic warfare may be able to avoid escalation in the intensity of coercion, perhaps simply threatening its adversary with military force not invoked. In doing this it has an instrument that may be less costly, more efficient, and more effective especially in terms of political goals that follow the confrontation, and more flexible in terms of the diplomatic or ideological [including propaganda] options available to it. At the time this paper is being written, this is one of the elements still available for the United States and others, acting pursuant to a coalition formed under the auspices and mandate of the U.N. Security Council.

Alford also suggests that if states, like the United States and the Western democratic states, are to have the advantage of the economic instrument of coercion, they must have the appropriate power base within the government to provide for a professional and continuing inquiry into invoking it. This at present is lacking. Like other policy instruments at our disposal, the instrument gains effectiveness through close inquiry and attention to its use, and to inquiry into the use of such techniques by others against us. Alford's text is then an attempt to strengthen the coercive economic instrument through a framework of inquiry addressing a process of claims and counterclaims among states including the working of that process within the government and its own cadres.

The larger context in which the instrument is involved extends to the persuasive economic instrument, so that the nation would seek to persuade allies or friendly states, and even, when the occasion demands, use persuasion with or in place of coercion with regard to rivals. But the usual context for economic warfare is that of the use of a coercive instrument, and its effectiveness is determined by the extent to which the flow of material resources of an adversary have been impaired, the duration of that impairment, and the elements in the economic process that are affected.

The economic sanctions of the Security Council against Iraq [commencing in 1990] were all-inclusive. It was expected that through such sanctions, sufficiently and intensively imposed, Iraq would meet the terms imposed by its adversaries without an outbreak in war. Hence, while the tendency has been to step aside from describing the situation as one of armed combat or war, the use of sanctions are used as if a war had been declared between the parties. It is evident that the use of such measures are permitted through the United Nations Charter without regard to ascribing the element of war, but it is also clear that Iraq has seized the territory of Kuwait through aggression, and that continued possession of that territory adverse to the legitimate government and to the global community at large constitutes a continued aggression. Accordingly, the states involved can invoke collective self defense where Kuwait has called for assistance, and, according to some views, they might claim self defense itself. The claim of self-defense however would require a clear showing that Iraq's action was aggression against their "political independence", "territorial integrity", or against the objects and purposes of the Charter.

The coercive element in economic warfare directs us to the action element, but the design and use of economic warfare techniques lead to modifications in the law. It is evident that with changing methods of warfare and therefore changing tolerances about the attacks that are made and the weapons used, the law will be affected. The law is largely shaped by how states behave in their recourse to coercion. Coercively oriented, the economic warfare is aimed at resources, but more directly according to Alford at creating "psychical disequilibrium in the power elite of the adversary." He cites Liddell Hart as describing this "as the sense of being trapped."<sup>85</sup> Effective use of economic warfare is characterized by a reaction in the target elite or adversary in which it accepts demands before the situation deteriorates. This of course is the expectation in imposing such sanctions on Iraq in the current crisis. Nonetheless, economic warfare alone is insufficient to force major policy changes: military power is almost always required.

Numerous other correlations of economic warfare tactics and the traditional tactics in the use of military force could be mentioned. These serve us here to freshen our perceptions about the application of the principle of economy of force, of, perhaps, the various law of war principles, applied however to the economic warfare techniques, the need to select target elites with care, and to determine as far as possible the effectiveness of the technique in achieving results. Economic warfare when coupled with the activities of irregular or guerrilla forces, or in the context of limited or regional wars, raises problems that are not addressed in this paper.

The attempts described in this paper to balance out opposing principles, one favoring the command and freedom of the seas, and the other favoring the claims of belligerents to deny commerce with their rivals creates the primary difficulties

for laying down the principles of economic warfare at sea. This balancing of principles is given added complexity under the strategies of states, because economic warfare may only be a strategy to deny a rival belligerent essential goods, or it may be a larger strategy, such as that aimed at opposing its war-making powers or capabilities. In the second perspective, which as shown earlier was adopted in World War II, the larger economic strategy combining military action and the goals of destroying the economy led to strikes at the cities and urbanized areas, at industrial and economic targets, and even the populations that service these targets, as well as the traditional strategies of reaching commerce on the seas.<sup>86</sup> The economic strategy was thus the underpinning for the methods of economic warfare, one being used to justify the other.

Much of this is put by the commentators at the turn of the 20th Century. Captain Mahan in a familiar passage puts the argument for a strategy of economic warfare that is aimed primarily at reaching commerce and trade:

The history of Sea Power is largely, though by no means solely, a narrative of contests between nations, of mutual rivalries, of violence, frequently culminating in war. The profound influence of sea commerce upon the wealth and strength of countries was clearly seen long before the true principles which governed its growth and prosperity were detected. To secure to one's own people a disproportionate share of such benefits, every effort was made to exclude others, either by the peaceful legislative methods of monopoly or prohibitory regulations, or, when these failed, by direct violence. The clash of interests, the angry feelings roused by conflicting attempts thus to appropriate the larger share, if not the whole, of the advantages of commerce and of distant unsettled commercial regions, led to wars. On the other hand, wars arising from other causes have been greatly modified in their conduct and issue by the control of the sea.<sup>87</sup>

Thus belligerents, under current conditions seek through superior seapower to stop entirely the trade of their rivals with others, ensuring, they believe, that these goods that would serve the war effort once denied will have an important impact upon weakening the capabilities of the rival. But in shifting to the *war fighting* capabilities, they have also shifted their perspectives toward a strategy that acquiesces in targeting economic and industrial targets through air strikes. In the past, their objectives were more materialistic and less strategic, because they then sought to acquire the fruits of that commerce in order to benefit from the goods acquired and not made available to their rivals.<sup>88</sup> Mahan supports resort to "history" and the past practice of states in naval warfare, but argues that changes in naval warfare are such that "theories about the naval warfare of the future are almost wholly presumptive."<sup>89</sup> He refers to the shift for example in naval armaments: the "powers to injure an enemy from a great distance, to maneuver for an unlimited length of time without wearing out the men, to devote the greater part of the crew to the offensive weapons. . . ."<sup>90</sup>

Sergei Gorshkov, Admiral of the Fleet of the Soviet Union writing in the middle of the 20th Century, uncovered interests of his country in a naval force. Foremost in these interests he included the resources of the seas, and the traditional uses. But "the main goal" for building the Soviet or communist naval forces lies in building up communism:

For the Soviet Union, the main goal of whose policy is the building of communism and a steady rise in the welfare of its builders, sea power emerges as one of the important factors for strengthening its economy, accelerating scientific and technical development and consolidating the economic, political, cultural and scientific links of the Soviet people with the peoples and countries friendly to it.<sup>91</sup>

Building on this theme throughout the book, Gorshkov in the conclusion turns the Western theme back upon the Western states by insisting that it is not they who are expansionist. The imperialists are pressing expansion. The competitive arena into which naval forces must be introduced lead to:

A new stage in the struggle to divide up and take over the oceans for economic and military purposes may now be observed. The World Ocean is becoming the object of a kind of expansion by the imperialist states. It is obvious that in this struggle navies, as an instrument of policy, will occupy an important place<sup>92</sup>

Admiral Gorshkov has thus proved to be fully capable of handling the political, polemics and dialectics of his civilian counterparts, and thus, presumably, able to woo away sizable funds for the building of the Soviet navy. In two passages of related argument, he noted:

It is reasonable to consider that the totality of the means of harnessing the World Ocean and the means of defending the interests of the state when rationally combined constitute the sea power of the state, which determines the capacity of a particular country to use the military-economic possibilities of the ocean for its own purpose<sup>93</sup>

McDougal and Feliciano and numerous other commentators have reviewed the tactics and program of economic warfare in detail.<sup>94</sup> They point out that three tasks are involved. First, the characterizing of the goods and perhaps services to be prohibited or controlled. This activity identifies contraband, involving an appraisal as to the relation of the goods to the military capabilities of the enemy belligerent, and the application of doctrines relating to contraband. [Services might include the commercial provision of information from satellites. Reaching the satellites would require either ground, air or space-based interference, including the use of naval platforms for this purpose]. Second, stopping the flow of commerce that might increase the war potential or fighting capabilities of the rival, as well as the flow of neutral commerce in general. Third,



determining the disposition of the goods and the carrying craft, i.e., through destruction, condemnation, requisition or release [usually through the determination of the prize courts]. The modalities for conducting controls at sea extend from visit and search to certification of cargoes at their point of delivery or source or shipment. The modalities mentioned here tend to change, and significant change has an impact upon the law itself causing the parties to change or adopt differing perspectives about the applicable law. The modalities for imposing economic warfare through coercion at sea are supplemented by the use of aircraft and submarines and these have had a major impact upon the law and leading to frequent change in the applicable rules.<sup>95</sup>

Appraising the impact of these activities, McDougal and Feliciano conclude that both belligerent and neutral states are in a process of claim that is advancing community standards. The primary objective for each is to minimize the destruction of values prized by the neutral and belligerents, and encompassed in the law of war under the principle of economy of force.<sup>96</sup>

Detailed consideration here of the various activities and modalities must be followed in the writing of the commentators. But it is essential to bear in view the changing, dynamic nature of this form of warfare because of the new techniques of warfare, both in application and in weaponry, and the delivery of weapons, and because of the relations of the parties where they may maintain in parallel a considerable array of relations while confronting each other with imminent hostilities [as currently in the Middle East, the Iraqi crisis].

The rapid drawing down on reserves of resources or materials is another dynamic feature: many materials are in scarce supply, but are essential to effective war fighting with advanced technologies; some, like petroleum products, are vulnerable to attack and to denial through blockade, and are rapidly depleted by modern vehicles, aircraft and ships during the conduct of hostilities. Difficulties, and change in perception have arisen with regard to the goods that fall within contraband: early prize cases indicate that even foodstuffs contribute to the warfighting capabilities.<sup>97</sup>

The overall framework of economic warfare is also affected by a change in the violence and extent of the violence: a shift from the major global wars of the first half of the century to wars more limited in every respect may lead to a differing balancing out of the principles, so that the neutral states are favored, and peaceful activities within the public order protected. Blockade is then metamorphosed into other configurations: the term "quarantine" was used for a specific activity of denying Soviet missiles to Cuba,<sup>98</sup> and the term "interdiction" by the United States and others, including the Security Council of the United Nations, to refer to the interceptions made with ships passing to and from Iraq.

Forcible blockades provide an additional problem: if the view is taken that the blockade may not lead to the destruction of ships, particularly those that are caught within the war zone where the blockade is enforced, then the use of

aircraft and submarines would be shackled.<sup>99</sup> Here we have a collision in the new methods of warfare with traditional attitudes about the character of the blockade and its effectiveness. Past practice suggests that in warfare the changes in the use of force are the dominant elements affecting the perspectives of belligerents and non-belligerents alike, in some measure because they reflect the changing and intrusion of the new military technologies and new organization of combat units to impose force, including the blockades.<sup>100</sup> Admiral Miller, quoting Lauterpacht, catches this factor:

Measures regularly and uniformly repeated in successive wars in the form of reprisals and aiming at the economic isolation of the opposing belligerent, must be regarded as a development of the latent principle of blockade, namely that the belligerent who possesses effective command of the sea is entitled to deprive his opponent thereof for the purpose either of navigation by his own vessels or of convening on neutral vessels such goods as are destined to or originate from him.<sup>101</sup>

Of particular interest in the emerging law of economic warfare is the ease with which the belligerents have imposed their perceptions that the law must change with changing modalities or techniques of warfare, so that we find the use of force dominating such perspectives, and leading to change in such instruments as the Declarations of Paris and London. Similarly, national policy regarding the prosecution of the war dictated the attitudes, and affected the law concerning controls. Such law was most often the domestic statutory law, but the impact may be to remove goods from exemptions, or as public enemy property no longer protected by the Declaration of Paris.<sup>102</sup>

The Declaration of London perhaps was weakest in denying Britain its most effective naval tactic in economic warfare. Captain Maurice P.A. Hankey, naval assistant secretary for the Committee of Imperial Defence, observed that this would require repudiation of the instrument, and that otherwise Britain would be unable to refine the notion of blockade toward true effectiveness:

[In the absence of the Declaration] In that case our obvious course, to be adopted as soon as the naval situation permitted, would be to declare a blockade of the North Sea ports, and simultaneously to make a sweeping declaration of what was contraband, including all the principal raw materials on which German manufacturers depend as well as her main articles of export. Neutral vessels would be rigorously held up and examined outside the Cattegat; the doctrine of continuous voyage would be rigorously applied; a system of agents in Swedish, Danish, and Russian ports would apprise us as to how trans-shipment was taking place and measures would be taken to deal with offenders.<sup>103</sup>

Economic warfare is thus conceived as a part of a national strategy, and as aimed at strategic goals. Nations engage upon a strategy, or at times referred to as a "grand strategy" that provides them a framework for national purpose and

the exercise of national power, aimed at the optimization of values that they prize. A crucial element of each nation's strategy is aimed at protecting the nation and its values, and "interests" from the threats or attacks of others.

The United States and its allies cannot forego doctrine and a strategy aimed at countering as well as deterring aggression or threats of aggression regardless of source. For this reason, as well for the others stated earlier, the decline of the Soviet Union is not a sufficient reason for turning attention from the possible threats that might arise, particularly if that state under new elites in the future, or through chaos and breakdown, creates such a threat.<sup>104</sup> Soviet doctrine and concepts of the military art should be appraised to determine Soviet perspectives; rules of engagement, regulations, instructions for the men of the fleet, and so on, are not available, but would prove valuable if they are published. Nevertheless even without a comprehensive inquiry into all of the Soviet directives, it is unlikely that the Marxist-Leninist framework of reference will vanish, or that the United States would find it sufficient to relinquish caution in the future dealings.<sup>105</sup>

Perhaps the major reason for avoiding the equalities and "stabilization" anticipated under arms control agreements when controls are to be imposed upon naval forces is that the interests of states that are land-based and those that are the maritime states, or "thalassocracies", differ in substance and need.<sup>106</sup> The United States has interests to protect in peacetime relating to its trade, allies, and interests not matched by the Soviet Union; its interests in the event of armed combat even with states other than the Soviet Union might include a refined development of economic warfare, its modalities, techniques and tactics.

These differences in the larger terms of reference found in the maritime strategy as a whole were raised and considered at the Adderbury Conversations on Naval Strategy and Arms Control July 30-31, 1988, and the United States position summarized in the first statements:

The Americans explained their maritime strategy in terms of the nature of Western forces, the nature of adversary forces and national strategic culture. United States maritime strategy (a) was a defensive deterrent against a threatening land power and (b) emphasizes coalition warfare. Forward positioning of forces was required by both of these factors. It reduced misperception and contributed to stability as well as economizing on forces. Alternative strategies like direct defence of shipping were more force intensive. Once war begins, the American participants argued, maritime forces must be used offensively to be effective: the offensive was the stronger form of war at sea.<sup>107</sup>

Perceived in this sense, a strategy includes the programs, plans and policy framework that provide guidance to the means that are to be adopted or refined to achieve the strategic goals. Tactics are therefore distinguished from strategy and strategies, because they are the instrumental, or operational, means by which

the strategic goals are to be attained. Economic warfare at sea comprises the national tactics, and the methods used are either for enforcement or as policy instruments or policy oriented strategies, subject to refinement and change, to achieve goals.

But why is the law of economic warfare subject to continuing change? Our analysis indicates that this is the result of the interaction of law and the policy instrument. Because the instruments of economic warfare are controlled under law, but they also are the means to strengthen or promote the law. It can be said that the tactics identified with economic warfare both promote the existing law and lend themselves toward shaping the content of the law of the future; the continuing change in the methods and tolerances regarding economic warfare thus leads to a continuing change and refinement in the law that is applicable.

Other factors in the application of the law relating to economic warfare should be mentioned. Recourse to precedents is a traditional factor of legal inquiry, but according to Mahan, of less importance to strategy:

It is not . . . a vain expectation, as many think, to look for useful lessons in the history of sailing ships as well as that of galleys. Both have their points of resemblance to the modern ship; both have their points of essential difference, which makes it impossible to cite their experience or modes of action as tactical *precedents* to be followed. But a precedent is different from and less valuable than a principle. The former may be originally faulty, or may cease to apply through change of circumstances; the latter has its root in the essential nature of things, and, however various its applications as conditions change, remains a standard to which action must conform to attain success. War has such principles; their existence is detected by the study of the past, which reveals them in successes and in failures, the same from age to age. Conditions and weapons change; but to cope with one or successfully wield the others, respect must be had to those constant teachings of history in the tactics of the battlefield, or in those wider operations of war which are comprised under the name of strategy.<sup>108</sup>

Precedent in the law, especially when associated with war, has a differing operational position. Mr. Justice Rutledge, dissenting in *In re Yamashita*, pointed out that a war crimes trial, and its appeal in the United States Supreme court, was without precedent, and that the precedent not to proceed was of great importance. Seemingly alluding to the difficulty in the prosecution's getting a grasp on the operational, juridical facts, he noted:

Precedent is not all-controlling in law. There must be room for growth, since every precedent has an origin. But it is the essence of our tradition for judges, when they stand at the end of the marked way, to go forward with caution, keeping sight, so far as they are able, upon the great landmarks left behind and the direction they point ahead. If, as may be hoped, we are now to enter upon a new era of law in the world, it becomes more important than ever before for the nations creating that system to observe their greatest traditions of administering justice,

including this one, both in their own judging and in their new creation. The proceedings in this case veer so far from some of our time-tested road signs that I cannot take the large strides validating them would demand.<sup>109</sup>

Hence the intermingling of precedent, strategy, tactics and an emerging law occurs in a dynamic framework of situations, affected by rapid change in events associated with warfare and its technologies. This perspective has been caught with regard to submarine warfare in general, and is applicable to the development of such warfare for economic warfare:

There is no guarantee that the antisubmarine measures successful in the past will continue to be adequate in the future. A clear understanding of the events of World War II, their reasons and consequences, is necessary, however, as background for any decisions which are to be made in the postwar period. . . . One overall conclusion is clearly evident . . . the introduction of new weapons, gear, and tactics has led to a continual interplay of measures and countermeasures in which no other conclusion retains its validity for very long.<sup>110</sup>

The changes in strategy affected by changes in methods of warfare are so great that they are likely to have an impact upon the humanitarian element in the law of war, as is evident in the following:

According to an early distinction between strategy and tactics, strategy comprised the set of decisions made and acted on out of sight of the enemy; tactics comprised the rest. The advent of modern weapons, such as carrier-based aviation, has permitted outright battles to occur at greater than visual ranges, and the modern version of the distinction holds that a strategic actor is one who does not have "contact" with the enemy. "Strategic warfare" has come to refer to war made against population [which had been under the care of the Geneva Conventions] or industry, and latterly, to such war waged with nuclear weapons. The term "operational art" introduced by Soviet thinkers but well on its way to adoption by the West identifies a more highlighted layer, between strategy and tactics. A further useful distinction divides strategy and "grand strategy," the latter being the total scheme of national military endeavor, including economic elements.<sup>111</sup>

The "grand themes" of sea powers over the period from the ancient Greeks to the present are described by one commentator in terms of the rise of the thalassocracies, i.e., the states that have either substantially augmented their sea power relative to other states, or have established sea forces as part of the comprehensive maritime state. Great land-powers like the Soviet Union thus would innately move toward sea forces that would provide it with defense, and a reasonable, and sufficient defense would be its goal. The great sea powers seek command of the sea, in part because of their dependance upon that command, calling for the following elements: a superior fighting fleet to maintain exclusive control of the seas; a naval capability to defend against invasion; to protect

maritime commerce; to blockade the enemy coast; to engage in combined activities with other military services; and, to provide under current conditions with strategic bombardment.<sup>112</sup>

One commentator recommends that the United States recognize its role as the enforcer of peace upon the seas:

If international agreements on laws to govern the sea finally emerge, or if new defensive treaties are enacted, it will still be American sea power which will enforce them. Even should new agreements not occur, or should they fail, the United States will unilaterally continue to use its sea power to enforce free exchange upon the sea. This is the legal right of any maritime nation – in our case the most powerful nation in history at that – much of whose livelihood is derived from the sea. Happily, most of the civilized world – which profits thereby – is grateful for it.<sup>113</sup>

How does this practice bear upon the law of economic warfare? It appears that states involved in coercive actions are not concerned with the “progressive development” of law, or with identifying that law with a larger, constitutive global order as such. Their primary concern is with the freedom to act when they resort to the use of force, but they want for symbolic, prestigious, or even power-oriented reasons, to have the permission to act under law or to be supported by law in their actions.

When states turn to the use of force they are turning to an instrument to promote or strengthen their law, but the law that they are concerned with is at best the law that gives them the support of their actions, and enables them through the collective element that makes up law to draw upon community support. From law they attain a certain degree of economy in their actions, because the costs or burdens in turning to force are either reduced, or some of them are eliminated. And acting “within the law” they have a calculus of permissive actions rather than one of actions that others may condemn as “aggression,” or “tortious,” or wrongful, and therefore that they may refrain from assisting or supporting.

### Strategic Economic Warfare

Economic warfare at sea considered in terms of the objectives or purposes is part of economic warfare in general. Strategies to strangle an enemy’s economy are invoked by resort to all of the military capabilities, as well as the non-military strategies. They may be applied during “peacetime” or during “wartime,” drawing upon Security Council directives, and so on. Strategic economic warfare thus refers to warfare aimed at the enemy’s economy. The modalities of strategic economic warfare have been affected by the advances in military technology, so that submarines are now armed with weapons that can operate

against economic targets, while submarines themselves may engage through their traditional role of destroying sea commerce to achieve supporting objectives.

The operational element in warfare thus has a major impact upon the perspectives of states and their elites. States during wartime claim a freedom to act, or determine the decisions to be taken, because of the necessities involved, and the overriding need of self preservation. Moreover, the necessities in war are affected by new weapons, new technologies, and new means for conducting warfare. All such determinations tend to couple perspectives about force planning, deterrence, strategy, both military strategy and the "grand" or overall political strategy, and national policy.<sup>114</sup>

Once the legal or policy hurdles that strategic warfare is an attack on the civilian population have passed, states insist that they are acting permissibly under the legal principle of military necessity. They can then claim that as long as they pursue the objectives of reaching the military economy or the economy that supports the military effort they can mount their attacks on cities, the urban population, the entire structure that supports the war effort. They can also justify the use of weapons that are less discriminate, and the line between discriminate and indiscriminate attacks begins to blur, and with this development, the line between protecting the noncombatant under the law of war becomes cloudy as well.<sup>115</sup>

The economic warfare that is invoked during hostilities has its counterpart in the economic sanctions invoked during peacetime, in particular, the sanctions adopted pursuant to directives of the Security Council of the United Nations. Here there is opportunity to pursue the imposition of coercion in stages, but there is also the probable drawback that attaining the support of states in the Security Council will have retarding impacts upon a war or combat strategy, affecting surprise, deception, and so on, or enabling the targeted state to gain the advantage of breakdown in the coalition it faces, or to secure a more substantial grip on its military forces and capabilities.

The current application of sanctions under Security Council directives and community participation [but with the United States taking the lead] is aimed at the head of the Iraqi government, and, presumably, will be aimed at those who might assume the lead in the event he is incapacitated or removed. But it is also a sanctioning strategy that necessarily must be aimed at the populace, their representatives, other states in the region, and supported by a military, economic, ideological and diplomatic array of threats.

Economic warfare – when we assess it in terms of the targets – draws upon the use of military forces, and may be enhanced by diplomatic and ideological strategies as well. With changes in the military capabilities and weaponry of states, belligerent states adopt new modalities of economic warfare, primarily shaped by the targets of the new weapons. Thus, during the second World War, the belligerent states turned to strategic economic warfare with new weaponry,

particularly through the intensified use of strikes by aircraft. The important feature in economic sanctions, or economic warfare, is that they involve actions usually supported by coercion to achieve their goals and that these actions gain their legality or permissibility through the reaction of other states, and ultimately through community standards. The claim element is of major importance in the process of claim that leads to law when the actions involving coercion are in view. Control, under law, or under social or other processes, upon the resort to economic warfare is thus guided by the general principles in the law of war, or the law relating to coercion, but additional, more detailed controls call for a continuing clarification of state perspectives about such actions, and thus the emergence of what they will tolerate ultimately to be found in the governing law with regard to their behavior.<sup>116</sup>

State practice in the use of strategic aircraft strikes prepared the way for the doctrinal acceptance, at least, for targeting strategic nuclear weapons on the urban communities, the so-called "counter-value strategy" and the adoption of the newly appearing nuclear weaponry both for offensive and defensive military objectives. Inherent in the "humane" version of this strategy was that it was applicable to threats, but not applicable to the actual use of weapons, but this distinction would be difficult to maintain in belligerent practice. However, with the rise of nuclear weaponry, states adopted military strategies and political strategies, with each drawing upon the other for support, wherever possible. /

During combat, the military strategy, whose emphasis on the use of force and on using it to strengthen other strategies prevails. During peacetime, the political strategy is adopted. The differences tend to lie around the selection of modalities of intensified violence or force, so that the military strategy is a strategy of using military capabilities while the political strategy though it may invoke such capabilities can operate in a more dominant sense during periods of limited or "low intensity" violence.<sup>117</sup>

B.H. Liddell Hart couples his readings of military and general history with his understandings from Sun Tzu, close readings of the campaigns of such distinguished generals as Belasarius, reflecting on Clausewitz and other writers on strategy.<sup>118</sup> Hart proposes that military strategy, even if it must accommodate other strategies, such as deterrence for example, is a strategy of drawing an aggressor into his attack, and then while he is occupied with this, to pick the points for counterattack. Deterrence policies are open. Military strategies depend upon secrecy:

In strategy..calculation is simpler and closer approximation to truth possible than in tactics. For in war, the chief incalculable is the human will, which manifests itself in resistance, which in turn lies in the province of tactics. Strategy has not to overcome resistance, except from nature. *Its purpose is to diminish* the possibility of resistance, and it seeks to fulfill this purpose by exploiting the elements of *movement and surprise*. [p.337]. (Emphasis by author).



During peacetime we have discovered that the strategies of opposing or rival states are "adversary" in nature, while it seems that the grand strategies they adopt are an amalgamation of all of the components of power to further national purpose and goals.<sup>119</sup> The interaction of the political and military strategies is familiar in state practice: the dialectical element in the working out of strategies of rivals tends toward an equilibrium or system of continuously evolving checks in terms of the weaponry, usually leading to the "deterrence" equilibrium where the weaponry that is balanced is perceived as weaponry of intolerable destruction.<sup>120</sup> It is presumed that the deterrence strategy, shared by the rival states, is dependent upon the will of each, and that the will to invoke the weapons is crucial to the "credibility" of the strategy.<sup>121</sup> However, the actualization of the strategy into conduct, i.e., by way of the use of the weapons, is presumed to depend upon that will.<sup>122</sup>

Deterrence according to a leading commission that considered our strategic forces may be identified in terms of countering the action of a rival. The extent to which it is applicable with economic sanctions remains uncertain, as indicated in the following expressed here in terms of the Soviet threat:

Deterrence is central to the calm persistence we must demonstrate in order to reduce these risks [of war or military attack] . . . Deterrence is not, and cannot be, bluff. In order for deterrence to be effective we must not merely have weapons, we must be perceived to be able, and prepared, if necessary, to use them effectively against the key elements of Soviet power. Deterrence is not an abstract notion amenable to simple quantification. Still less is it a mirror image of what would deter ourselves. Deterrence is the set of beliefs in the minds of the Soviet leaders, given their own values and attitudes, about our capabilities and our will. It requires us to determine, as best we can, what would deter them from considering aggression, even in a crisis – not to determine what would deter us.<sup>123</sup>

Distinctions in this context of a "political" strategy of deterrence and a strategy of armed conduct thus tend to arise from the extent to which weapons are invoked. But the differences between "offensive" and "defensive" weaponry long largely meaningless in wartime or armed combat have less meaning during peacetime as well. Weapons in peacetime attain their effectiveness through the threats they impose and may therefore be invoked by the diplomat or ideologist, or for the purposes of propaganda, or to attempt to gain strategic advantage over one's opponent.<sup>124</sup> The use of the nuclear weapons to back up economic sanctions leads to speculation: it is possible however that the deterrence equilibrium, and the proliferation of these weapons [or the appearance of readily available alternatives such as chemical weapons] will lead to their having little impact upon such sanctions.

The "will" of the nation to act or endure is introduced into its strategies or implied in them as a crucial and necessary component of economic sanctions as well as of warfare in general. The perception of a nation's will by Clausewitz

leads to his assessment of the center of gravity of a belligerent, i.e., the locus of its power to act or decide. Thus, in the war in Southeast Asia this may have been for the United States the element of public support.<sup>125</sup>

There is a direct correlation between solid objectives and what Clausewitz called the "strategic center of gravity." That is the point of decision. National War College students recently applied that principle to Vietnam. The group generally agreed that the strategic center of gravity for South Vietnam always was the people; not body counts on the battlefield, but *the minds of the people*. It took U.S. leaders a long time to figure that out. The primary pressure point for the United States was national will. The enemy found *that* out early, and continually turned the screws. No one determined the strategic center of gravity for North Vietnam. It may even have been in some other country. That is one reason why it was so hard for us to define decisive objectives.<sup>126</sup>

Without the will to carry on a struggle to achieve a clearly-defined goal or objective, even a stronger military force lacks the social will essential to enabling it to endure, persist and win. Hence the notion of economic warfare, turned to peacetime, becomes part of a larger strategy in which targeting is upon a rival's economy, and therefore upon his cities and industrial areas, and, in peacetime, the threats can be imposed by weapons and military capabilities of all kinds. In the economic sanctions imposed under Security Council directives upon Iraq the naval forces are of particular significance for the purpose of blockade and for providing military threats.

Strategic economic warfare, largely the outcome of the second World War when waged with air-borne delivery of weapons to attack the German and Japanese cities and thus the economy of both countries, is likely to continue into future wars. The link between the political objectives and the conduct of warfare stressed as a fundamental principle of Clausewitz is even clearer when we turn to economic warfare in this sense. The arming of naval vessels with strategic weapons makes them an essential element both in the deterrent factor and in the conduct of hostilities should belligerents turn to strategic weapons.

### Strategic Economic Goals

Economic warfare, like other measures of warfare, and the law regulating that warfare find their place within the larger strategy of confronting and combatting an enemy or rival, and within the programs instituted under that strategy to attain the policy objectives of warfare. Strategy even as traditionally conceived has a military and political component in common usage.<sup>127</sup> Strategy is generally identified as the program and plans, and operational guidelines, formulated and tested with regard to specified strategic objectives of states.

Used in the political, or broadest, sense the concept of strategy assimilates the augmentation and application of national power to achieve such goals both

during war and peacetime.<sup>128</sup> When narrowed to military strategy, the plans and programs and operational elements include the rules of engagement of the military forces for achieving military objectives during combat. The broad use of strategy among states is associated with the larger global policy goals particularly of the major states, and with the actions and operations that might through national power achieve those goals. The actions of states are expected to accommodate international law and community standards, and the perspectives of states that make up their strategy will seek to preserve and promote the values prized by the state.

It is notable that the modalities of economic warfare are readily invoked during wartime and peace, that they may be used in hostile actions, usually backed then by the use of military force, or as an unfriendly action, as in retorsion. Used in wartime with military force they are subject to the community standards generally encompassed under the principle of military necessity.<sup>129</sup> But this principle leads to judgmental standards such as the principle of economy of force [a fundamental principle of war applicable to the judgment and decisions of the commander]. According to Mahan that principle is best applied through attention to "exclusiveness of purpose."

. . . [C]oncentration [a principle of war] sums up in itself all the other factors, the entire alphabet, of military efficiency in war. In another way, Napoleon expressed this in a notable saying: "Exclusiveness of purpose is the secret of great successes." Exclusiveness of purpose means concentration of the will upon one object to the exclusion of others. There is thus a concentration of mental and moral outlook, of resolution, as real as the physical concentration of disposable forces: and when the moral prepossession exists in a military man the physical concentration will follow, as surely as any effect follows upon its cause.<sup>130</sup>

Such "warfare" conceived in the broader sense of including economic sabotage and economic sanctions and actions in general uses methods that can strike at a nation's vulnerable technologies and economies based upon technology [e.g., communications, computer networks, computer assisted decision processes], and during hostilities can check or interfere with vital lines of communication and instruction to naval vessels, and to the commanders in general of all of the military services. Economic warfare thus can be based upon technologies of peace turned quickly to hostile uses.

Mahan suggests that principles fit comfortably the development of a "strategy," but the pressure of tactics determines their operation and application. The pressure of tactics is impelled by new attack scenarios adopted by belligerents both in their force and contingency planning, and during combat, the changes in the organizational base for conducting and supporting war [e.g., the massive industrial infrastructure], the resort to the weapons and agents to achieve their immediate military objectives [tactical during combat; strategic in the larger

sense]. Similarly, economic warfare operates as a prelude to hostilities, as in the current Iraqi situation, or accompanied by severe coercion, it is shaped by the attitudes toward violence rather than the attitudes toward more remote economic goals.

Economic warfare undergoing change with changing technologies is thus brought under principles that are primarily affected by the growing content arising from belligerent [and even peacetime] practice of states. Hence,

Based as Naval Strategy is upon fundamental truths, which when correctly formulated, are rightly called principles, these truths, when ascertained, are in themselves unchangeable; but it by no means follows that in elucidation and restatement, or by experience in war, new light may not be shed upon the principles, and new methods introduced into their application.<sup>131</sup>

Naval strategy is then like other military strategies dependent upon the objective and the realistic attainment of the objective. The military realities however require attention to readiness and facilities for conducting warfare at great distances. According to Mahan:

It is true . . . that on a maritime theater the navy is the all-important factor; but in these days a navy no more than an army can stretch its lines of communication too far from a strong and extensive base. Its communications must be assured, either by overwhelming control of the sea, making it as it were its own territory; or else, by a well-knit line of posts properly spaced from the home territory.<sup>132</sup>

But the prevailing policy necessities in democratic states and even in the totalitarian states as they are now evolving demand substantial support by the public of the strategy that may involve war. Economic warfare commencing purposefully at an early stage may thus do two things: it can set the stage for an economic strategy; and it can set the groundwork for moving ahead to more intensive coercion if the less intensive modalities fail, or if persuasion cannot be adopted, and lead to the nation's goals.

Thus, Mahan noted with regard to the Monroe Doctrine the interlocking themes that had commanded social support:

The Monroe Doctrine in its beginnings was partly an expression of commercial interest, directed against a renewal of Spanish monopoly in the colonial system; it was partly military, defensive against European aggressions and dangerous propinquity; partly political, in sympathy with communities struggling for freedom.<sup>133</sup>

The Chinese strategist has aptly put the fundamental objective that determines the goals of the military commander. With growing linkage between the traditional modalities of economic warfare and the shift toward strategic

economic warfare, these goals are the same whatever the modalities of warfare chosen:

Victory is the main object in war. If this is long delayed, weapons are blunted and morale depressed. When troops attack cities, their strength will be exhausted.<sup>134</sup>

Clausewitz reached the same conclusion, stressing however that the policy element in undertaking war looks to policy objectives beyond those of the military objectives:

Combat is the only effective force in war; its aim is to destroy the enemy's forces as a means to a further end . . . The decision by arms is for all major and minor operations in war what cash payment is in commerce . . . Thus it is evident that destruction of the enemy forces is always the superior, more effective means, with which others cannot compete . . . When we speak of destroying the enemy's forces we must emphasize that nothing obliges us to limit this idea to physical forces: the moral element must also be considered . . . That the method of destruction cannot fail to be expensive is understandable; other things being equal, the more intent we are on destroying the enemy's forces, the greater our own efforts must be.<sup>135</sup>

So Clausewitz too raises the need to achieve an economy, a swiftness, and the shock of military effectiveness in using military forces, but his stress on achieving political aims compels the commander and statesman to combine capabilities toward making war achieve the larger global goals that make the sacrifice of war worthwhile.<sup>136</sup> Into this crucible of strategy and policy states may invoke the modalities of economic warfare, perhaps before armed hostilities have begun and then during combat. And, if combat escalates, the strategy adopted, and implemented, is likely to turn to strategic economic warfare, coupling the use of strategic weapons to strategic goals that would bring an enemy's economy to a standstill.

### Economic Sanctions in Peacetime: Assessment

Economic sanctions are based on economic strategies, and the application of economic instruments of policy, to achieve either the exclusive policy objectives of states or the common objectives among states for achieving global order, or strengthening it.<sup>137</sup> Economic sanctions may be exercised by states individually or collectively pursuant to directives of the Security Council or of the regional organizations of which they are a member. Where invoked without armed force they would not constitute aggression under the United Nations definition of aggression.<sup>138</sup>

Economic strategies and economic sanctions are available to states to achieve a variety of goals that states may seek for themselves alone, as well as the

far-reaching, inclusive goal of minimum order. They may enable states to prepare themselves for hostilities with potential enemies by weakening the economy, and the will, of their rivals or of states violating international law. This is one of the primary goals of the current economic sanctions directed at Iraq. [1990].

They may also constitute threats with the expectation that the violator will recognize the possibility that the coercion imposed by the sanction may be intensified to the point of hostilities, and the further expectation that the violator may then terminate its misconduct. They may of course be used in association with other strategies both in times of peace and in war, so that ideological, military and diplomatic strategies would then operate to reinforce each other, and give greater assurance of achieving the larger goals of restoring the damage to the global order itself. This too is indicative of the stated goals of states in the Iraqi crisis.

Such sanctions and strategies thus may reduce the bases of belligerent power of an adversary – reaching to weaken his power, his wealth, and even his rectitude or respect within the community. But in mentioning these broad goals and the resort to economic sanctions, the need for analysis and consideration of the effectiveness of the sanctions emerges. States may be able to select between economic sanctions and military sanctions, but then find themselves without adequate assurance that the economic sanction alone is the least costly path to take, or that a prolonged economic sanction will achieve the desired goals, with the expectation being that the costs and burdens, and uncertainties, of hostilities can be eliminated. Or that a prolonged economic sanction might so weaken an adversary that a military blow after the sanction has run a considerable period might be more effective and less costly.

Although there are a variety of impacts that may occur to the violator when a comprehensive economic sanction, or one in which the confinement of the violating state's economy is reasonably complete, is imposed, the primary aim of such a strategy is to reach either the economy or the economic activities. A comprehensive peace-time coalition of states invoking an economic sanction against a state, such as Iraq, is aiming its actions at the economy. Should the coalition turn to the military sanction, the goal of the economic component of their strategy will continue to be the economy but implemented through military or strategic measures. Whether the economic sanction can reach the desired results without escalation to intensified coercion and military force, calls for judgment as well as for adoption of strategies that can be readily corrected if they are not found to be effective.

Monitoring economic sanctions to determine their effectiveness, the assessment of the vulnerabilities of the targeted state, the assurance that a coalition of states will cooperate in imposing a comprehensive sanction, the imposition of other sanctions, are all matters that call for the closest, continuous review. Economic sanctions involving a large number of states are likely to call for

economic assistance and cooperation among the coalition to replace the economic benefits that had been enjoyed before the sanctions were imposed.

The force planner concerned with the use of naval forces in this context must consider the resources he will shift to the economic strategy, and he must balance in his strategic assessment the effective use of the strategic instruments at his disposal. When and how much of his resources are to be devoted to strategic economic warfare, for example, necessarily entails consideration of the costs arising upon termination of the war, assuming victory, to restore an enemy whose economy has been severely damaged by such a strategy.<sup>139</sup>

Economic warfare in general is premised on the expectation that states cannot effectively wage war if the morale of their citizens is diminished or the industrial structure destroyed. The uncertainties of this warfare are brought out by the experience of the British armed forces in the Second World War, and in particular the experience in using the air force as the delivery vehicle for large amounts of explosives and incendiary devices. The naval forces would unquestionably be drawn into such warfare in the future if their long-range missiles or off-shore bombardment capabilities were to be enlisted.

The result of the British experience suggests that economic warfare aimed at strategic targets was not successful in bringing the war to an end. The extent to which it enabled the military actions and activities to achieve success is unclear. It must be emphasized that strategic economic warfare was conducted by military actions, primarily aircraft attacks, on economic targets behind the military lines. But if this warfare was questionable, the effectiveness of economic warfare in peacetime, such as through economic sanctions, remains in doubt. Such sanctions do not have the urge of military force, nor the impacts such force would have on the populace and its place in compelling the termination of hostilities.

With the brief appraisal of British practice in World War II by Professor D.H.N. Johnson in view, we might consider how the British policy for a strategic economic warfare program came about, and how it was applied.<sup>140</sup> The British policy at the beginning of the second World War can be traced to a memorandum of May 2, 1928 by Lord Trenchard. Following Clausewitz, but adding a new dimension, the memorandum declared that force would not be administered exclusively to destroy the opposing air forces, but to 'break down the enemy's means of resistance by attacks on objectives selected as most likely to achieve this end.'<sup>141</sup>

The attacks on other selected objectives became a matter of controversy, because, under the principle of economy of force, there was concern whether the use of scarce attack resources might better be applied to military forces themselves, or directly to military installations. President Roosevelt addressed an appeal to refrain from attacks on undefended cities, and expected both sides to respect this position. However, as the fighting progressed, the "seven possible targets" for attack drawn up by the Chiefs of Staff in January 1941 included

civilian morale. The others summarized by Johnson were the German air force, anti-invasion targets, transportation, industries, naval objectives and oil, with industries, transportation and 'morale' as convenient secondary targets. Morale was subsequently to be linked to transportation, and then ultimately the economy as a whole. Yet night bombing, favored to protect the attacking forces, necessarily included attacks that might involve a larger area than the specific targets themselves. This led in Britain to debates usually on the grounds of moral principle and humanity. Churchill's own reflections suggesting a principle of reciprocity at work were reluctantly accepted by the military services, stressing that naval blockades during the First World War led to far more deaths or casualties than did the major bombing attacks of the Second World War.<sup>142</sup> Churchill's minute was the subject of much of the controversy:

It seems to me that the moment has come when the question of the so-called 'area bombing' of Germany cities should be reviewed from the point of view of our own interests. If we come into control of an entirely ruined land, there will be a great shortage of accommodations for ourselves and our Allies and we shall be unable to get housing materials out of Germany for our own needs because some temporary provision would have to be made for the Germans themselves. We must see to it that our attacks do not do more harm to ourselves in the long run than they do to the enemy's immediate war effort.<sup>143</sup>

Area bombing, and now "target bombing" refer to attacks on cities or congested populace areas in which the indirect damage to the civilians will be large. But strategic economic warfare, ultimately, was to include the civilians themselves as targets provided they were working in the military effort. In major wars, this would mean the entire community. Concern with such attacks led to the claims of "undefended" places, of non-military objectives such as hospitals and schools, of "neutralized zones" during wartime or zones of protection of non-combatants, and even to the protection of cultural property.

Under Protocol I, Geneva Protocols, 1977, indiscriminate attacks are prohibited. Such attacks are likely to include those practiced in World War II on urbanized areas and aimed at economic destruction. Article 51 declares in para. 5:

Among others, the following types of attacks are to be considered as indiscriminate:

- a. an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village, or other area containing a similar concentration of civilians or civilian objects; and



b. an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.<sup>144</sup>

Strategic economic sanctions, such as those that are currently practiced with regard to Iraq under directives of the Security Council of the United Nations, are also dependent upon naval forces and naval support. The considerable distance to the probable field of land combat dictates the need for an effective naval force, at least to offset attacks that might be land-based, or based on the naval forces of the aggressor, and naval forces would be needed to support such attacks. In this role, the navy and other military forces operate both in a deterrent capacity, where it is sought through the force they threaten, to prevent a war and gain the objectives of war, or should force be invoked to provide attacks that will be effective, economical and swiftly achieve a termination of the war with the enemy's forces destroyed.

Compromises with these objectives or a failure to pursue the political objectives would be inconsistent with the teachings of Clausewitz and others. But experience with economic sanctions in peacetime is minimal: it might be argued that when such sanctions are attempted against a strong nation they may lead to attacks by that nation. It is possible that Japan launched its surprise attack on the United States in the second World War because it lacked resources, and sanctions seeking to prevent it from reaching those resources were viewed as acts amounting to war.

The indicia of effective sanctions are found in performance. Clarification of goals and purpose, and the extent to which these are attained is an important task. The effectiveness of the economic sanctions ultimately depends upon whether the target state can be reached in terms of its economy, i.e., as to the necessities of life, the means of survival, and to some extent as to the morale of its citizens. The ability of Iraq to produce on its own territory adequate foodstuffs or to achieve the flow of foodstuffs and other necessities through smuggling or breach of the sanctions must be considered in appraising the time needed to achieve economic goals. It is unclear whether achieving "economic" goals is enough, or whether achieving them will lead to achieving other social goals as well.

Whether military forces are to be disposed or maintained, or the extent to which this is done to ensure such sanctions, and also to assure that Iraq will not turn to military action is a matter for judgement to be made through those who participate in such things within a given state.<sup>145</sup> Whether other sanctions, ideological, diplomatic or "political" should be imposed is a matter for judgment as well, and resort to them may lead to a more comprehensive set of objectives, and a more refined array of targets than those of the economic sanctions alone.<sup>146</sup>

## Prospects for the Future

What are the prospects for the future rules of naval warfare, and especially those of economic warfare at sea? These prospects depend in large measure upon the new modalities for exerting coercion – new military capabilities, weapons, and methods of attack. They also depend upon the attitudes of states toward public order: will they continue to struggle over widely differing perceptions about global order, partially guided by the United Nations Charter and international law? Or will they turn in earnest toward promoting global order under the United Nations Charter or otherwise?

But formidable challenges lie ahead. Among these: naval forces are likely to be developed to undertake new and more difficult missions, in which the elements of economic warfare are commingled with those of the direct use of force. The graying of weaponry – submarines and surface ships alike carrying strategic weapons as well as weapons for their own defense, the deployment of submersibles, and so on will have their impact.

Economic warfare short of war is likely to be refined: in the current crisis in the Middle East economic sanctions under the United Nations Charter have been directed through resolutions of the Security Council.<sup>147</sup> These include the use of naval forces, as set forth under Resolution 655 (August 25, 1990):

[The Security Council] *calling upon* those Member States cooperating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstance as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolutions 661 (1990).<sup>148</sup>

But economic warfare claimed under the exercise of self-defense against aggression, or by way of reprisals, or in response to unfriendly acts by way of retorsion, or as ordered by the regional organizations may be anticipated. While naval forces operate in peacetime through presence, transit, military exercises, port visits and so on, it is probable that they may be used as in the past for more coercive measures, and that these will be directed at economic targets as well as the traditional military targets.

New methods of economic warfare are likely to appear and be claimed as permissible in the future.<sup>149</sup> The quarantine in the Cuban-Missile Crisis furnishes an example of a method designed to reach Soviet shipments of missiles exclusively, and thereby to escape the more comprehensive program that is associated with the blockade. Such an action has variously been characterized as an act of “self defense,” a “quarantine,” a “blockade” with a new and differing name, as an offensive act, permitted to affirm certain interests, and so on. Resolutions of the

United Nations General Assembly, as with its "Uniting for Peace" Resolution, can provide recommendations to members to act using economic or military sanctions, and affording legality or permissibility to such actions. These too may assimilate new methods of warfare. Article 94 of the United Nations Charter suggests that enforcement of a judgment of the International Court of Justice may be directed through the Security Council. As seen, this could include economic sanctions, enforceable through naval forces:

[Article 94 (2)]. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Supplementary law such as that from the Briand-Kellogg Pact, coupled with the Budapest Articles of Interpretations, 1934,<sup>151</sup> must be gradually assimilated in the practice of states to control the resort to coercive measures.<sup>152</sup> Institutional arrangements must be developed and invoked to ensure consultation and decision-making for the community at large. Regional organizations such as NATO presupposed to be the appropriate check on threats of aggression must remain operative.

However, the trends in law as prescribed and applied have become clear: belligerent actions are shaped through new methods and weapons of warfare, and they, in turn, continually reshape the expectations and law of neutrality, as well as the tolerances relating to all forms of coercion, including economic warfare.<sup>153</sup> We can envisage future conferences addressing problems of this nature. But past practice and trends suggest that the work and drafts of such conferences will have little meaning unless the law that is drafted into these instruments is closely assimilated to the expectations of the "operators," i.e., to the decision-makers involved in resorting to the use of force itself.<sup>154</sup> Strong tendencies of such conferences and drafts to rely upon the elegance of law, displayed through the language that is used, and to rely upon the good faith of nations in adapting their practices to a set of rules, and the opposing tendencies of states to seek out how they intend to protect themselves or deter others against attacking them are primary, almost primordial, instincts almost always taking precedence when the war crimes courts meet or when the prize courts determine and apply the applicable law.

States concerned with economic warfare must give closer attention to the implications of economic measures and methods that are used in war, or in peacetime to gain strategic advantage with regard to future wars. Strategic objectives have appeared creating a shift in the perspectives about such warfare, and about the methods to be invoked. The shift has led to an increased tendency to use forcible measures of economic warfare, or, at least, to include under

forcible measures of warfare, the economic targets, or the economy selected as a strategic target. Additionally, states are faced with a form of economic warfare when terrorists shift to targets critical to the economy, or where "low-intensity" conflict erupts with the same tendencies. Attacks by such groups intended to upset a nation's economy by striking, for example, at nuclear power plants, or other facilities essential to the economy are among the future prospects. Similarly, the concerted acts of espionage and industrial theft enable states that practice these activities to gain the economic benefits of their rivals at little or low cost, and also to gain knowledge about vulnerabilities in the economies of those rivals readily exploitable during wartime by military measures.<sup>155</sup>

The major conclusion regarding economic warfare at sea relates to the changing content of the perspectives of neutrality. Traditional neutrality has given way in the two World Wars to a point of non-belligerency, characterized by the tolerances of the belligerents and neutrals with respect to how much discriminatory action will be accepted of neutral states, and when breaches are such that the neutral will be treated as a belligerent. To this extent, the traditional perspectives and law remain unchanged. However, under the traditional perspectives there was a clear line between belligerency and non-belligerency, but this has given way to the ambiguities of state practice. Under the traditional law the standards of impartiality and other standards determined with some degree of clarity and objectivity whether the neutral state had crossed the line of belligerency.

Now there are varying degrees of non-belligerency. Moreover, non-belligerency [neutrality in the changing current sense] is subservient to perspectives about global order and practices aimed at global order. These new perspectives give the neutral a claim at least that it can resort to conduct, formerly treated as contrary to its neutral responsibilities, and insist that it remains neutral and in support of the global order. Such a claim would include the argument that other states should take a similar position, i.e., all states are then aligned against the aggressor in behalf of the public order. It would mean, if fully carried out, that the determination of aggression could be widely shared among the states not at war. This is at best an assumption.

However, new perspectives have appeared regarding the use of force under the global organization [United Nations], and with regard to aggression. The participants that are not belligerents have a new role: there is a stronger case for them to resort to force for self defense, collective self defense, or promotion of the global order, and while acting individually claiming their acts to be *erga omnes*.<sup>156</sup>

The role of the Security Council is likely to change, if, of course, expectations among states show the willingness to defer to an international organ with the powers it has. These interacting elements show strong trends toward public

order, even when states resort to the immediate threat by way of self defense. Yet the trends are still emerging: states have no compulsion, no globally imposed responsibility to act against aggressors without the mandate of the Security Council. But neutrality becomes important only as a statement of the factual or interactive situation among states during belligerency: states are not belligerents if the belligerents do not treat them as such. Hence the subjectivities of states are the crucial element: the state subjected to aggression is the major starting point for determining aggression. Its actions in retaliation are most likely to be affirmed by the global community. The states claiming neutrality or belligerency are also a point of focus as to their standing, except that competing or conflicting claims and policies are more likely to be raised. The real change in trends is toward the notion of a collective perspective about both public order and the support of public order by "neutrals" in war, or at times of aggression.

## Conclusion

The conclusion of this analysis must consider two major issues. First. What can we expect from state tolerances with regard to economic warfare in the future? Second. What are our expectations about invoking economic sanctions, through the directives and resolutions of the Security Council of the United Nations, and about the effectiveness of both such sanctions and economic warfare? The answers to these questions based upon the preceding analysis lead us to conclude that economic warfare is a means of imposing either persuasion or coercion or both aimed primarily at the economies of rival states.

The effectiveness of such warfare will depend upon the impact of the coercion or sanction upon the targeted state, to wit, upon its economy, its economic activities, and its trade and commerce with other states. States with strong domestic economies that are not dependent upon other states supporting their economic base are those most likely to be able to protect that base.

The law regulating and governing economic warfare is an emerging law, reflecting the changing tolerances among states. Focus must be upon the operational element in law, that is the element that links the emergence of law with changing behavior patterns and tolerances associated with new weapons and methods of attack. What this leads us to conclude, in short, is that the law itself including the law of war is affected by the actions of states: new law is established through the tolerances arising with regard to attacks and weapons, old law is strengthened and the actions themselves are instruments both for enforcing and promoting the law in general.

Some of the conclusions in greater detail:

- Economic warfare at sea may be conducted by enemy states either by attacking the means by which an enemy's goods are transported, stored, or produced, or by

other coercive measures; prevailing trends suggest that economic warfare may include the targeting of the economy at large including its industrial base, and the civilian population involved in the production of goods and services essential for the military activities.

- To this end, naval vessels have been designed as platforms for strategic attacks, both with respect to the missiles that can be delivered, and with respect to the aircraft that they carry; such attacks were conducted in the Gulf War.

- Changing perspectives aroused by new weapons, new methods of attack, and the greater destructiveness of weapons affect the military and economic instrument, supporting the trends toward attacking the economic base of rivals, in part through working with the elasticity and the complementary balancing in application of the law of war principles relating to indiscriminate attacks, indirect damage and destruction, proportionality, and necessity. The attempts in treaties and agreements to reach the impact of change, e.g., in the Declaration of St. Petersburg, in the Geneva Protocols of 1977 [regarding attacks, precautions, and so on] have not been tested in belligerency and are likely to remain moribund.

- Economic sanctions against states, established under directives of the Security Council of the United Nations, are largely the creature of the determinations and decisions of that organ, but they may be aimed at a state's economy, or at its economic activities, including transport of goods, or any combination of these.

- As with other areas of warfare, the law and the emerging law of economic warfare have been affected by rapidly changing technologies, improved military organization capable of drawing upon those technologies, access to the plans of the enemy through improved intelligence, and the growing sophistication of the military capabilities and the methods of warfare.

- As with other modalities and instruments of warfare, the means or modalities of economic warfare are not fixed, but are adapted, as needed, with regard to the missions or targets involved, and adapted to the needs or necessities as perceived in the changing military situations; economic warfare is coupled with forcible measures that vary from minor to severe coercion, evidenced by low to high intensity of violence;<sup>157</sup> economic warfare at sea is perceived as a major component of economic warfare in general, and the methods of such warfare are and will be refined in the future in order to improve their effectiveness in achieving policy goals of the participants and those involved.

- Economic warfare at sea has traditionally been warfare through naval forces aimed at blockade, interference or countering the enemy's commerce and trade, including that of neutrals supporting the enemy; submarines and submersibles will be important components of such warfare, particularly in strategic as well as the traditionally economic warfare at sea and over land, and will include air blockades, and perhaps blockades through the targeting of ballistic or cruise missiles, or through electronic warfare techniques. Economic warfare is most likely to be affected by changing perspectives concerning the conduct of warfare, and therefore the operational law is likely to include much that is "soft" law - or law

evolving as belligerency progresses, rather than hard law or rules found applicable without change or affect on the policy involved in such rules. Much of this operational law of economic warfare is applicable to all methods of warfare.<sup>158</sup>

- State practice relating to wars in the last two centuries shows that economic warfare has had at best a limited impact upon weakening the enemy. However, this may be attributed to success of the targeted state in producing its goods, or in securing its goods from others. As economic warfare turns toward strategic economic warfare, all of the military services will participate in using strategic weapons to weaken an enemy's economy and for improving the strategic position of the state that invokes economic measures. As economic warfare is expanded conceptually and operationally to include strategic and tactical strikes at an enemy's economy, or involves more effective collective economic sanctions including those marshalled under the Security Council to reach a target state's total economy, the effectiveness of such warfare in achieving military and political objectives, as well as economic [economy-destroying] objectives are likely to increase, and the law relating to such warfare become more settled.

- Economic methods of warfare that operate by persuasion, i.e., by means in which force is not used or threatened, have not been widely used; however, as the economic base and the economies of states become more complex, involving a greater interaction of decisions, and more vulnerable to interferences with their technologies relating to communications, production of goods, transport of goods and so on, the economies will also become vulnerable targets, more readily subject to interference and even lasting damage.

- Law is appraised in the global community through a consideration of the entire context of expectations, including state practice, custom and customary international law, the decisions and policies of public officials, the activities of states and so on; accordingly, the application of law and its interpretation are likely to meet with the ambiguities, changing methods of warfare, changing tolerances among states as to what is permitted as warfare becomes more intense, and to elude the precision and certainty usually sought in the law itself: as states shift toward doctrines of strategic deterrence through threats regarding the industrial base and the industrial population, it is probable that they will make these threats effective in combat. If attacks upon cities and the industrial base are considered part of economic warfare - i.e., where the object of the attack, the economy, defines the method of attack, economic warfare, this would stimulate the present shift from economic warfare as a method operable in itself that is, as the means either short of war or as a non-forcible means during war to a method that embraces forcible means to achieve its goals.<sup>159</sup> This would lead to the unequivocal application of the laws of war and the standards of military necessity to such action.

- The applicable and operational law relating to economic warfare ranges into areas of substantial discretion: hence we can anticipate that as such methods of warfare are more frequently invoked, there will be refinements in economic warfare in which the attacks or methods of warfare are found permissible as the discretionary acts of governments in attacking each other. Further refinements may arise where the resort to force is authorized by the legal authority of the global

community, to wit, through directives of the Security Council, or in conformance with recommendations of the General Assembly of the United Nations.<sup>160</sup>

- The differences allegedly arising between offensive and defensive warfare are minimal because during combat, and in the force planning relating to preparation for combat, states employ similar methods of warfare, weapons, and tactics for each. Offensive warfare appears in the form of an assertive action in taking a military object, while defensive warfare assumes a reactive action in defending one, but combat tends to oscillate between the two forms of action. This perspective regarding weapons targeted for deterrence is already clear in the SALT agreements: the United States and the Soviet Union, though they purported to reach controls on "offensive strategic weapons," failed to define the weapons as such except by arbitrary stipulation and targets, and ultimately they were compelled to recognize that such weapons might be used interchangeably by way of tactics and strategy with weapons that counter the offensive weapons [the strategic defense weapons].<sup>161</sup>

- In adopting strategic ballistically delivered weapons, the United States and the Soviet Union have adopted a military perspective for outer space: transit by such weapons, testing of the delivery systems, and so on is not banned.

- The application of law and the standards from the law of war are imposed on economic warfare where accompanied by the use of force, or particularly where the objectives of economic warfare are achieved through the use of force; where there is a clear separation of economic measures from forcible measures, there is a wide discretion in their use, and their use is largely judged as acts of unfriendly relations or where made in response as forms of retorsion.<sup>162</sup>

- The relation of economic warfare to neutrality is a relation that involves the separation of belligerent and non-belligerent states; but this relation is subject to confusion because the status of war, and the status of neutrality, are matters that are in a continuous state of flux, particularly where the Security Council acts, so that neutrality itself is affected; in policy and in strict terms of law, the law itself is in a state of flux.<sup>163</sup>

- The operational element involving the decisions to use force, or the decisions in how it is used, are of critical importance in forming the policy that each of the states involved in belligerency expects to be the governing policy and source of authority both with regard to warfare in general, and with regard to economic warfare. There are immediate changes in the law that regulates warfare and the use of weapons reflecting changes in the conduct of hostilities.<sup>164</sup>

- Economic warfare is a strategy that may draw upon either the economic instrument of policy or the military instrument or both; deterrence of rival states is sought by demands imposed through coercion, and coercion may be imposed by a single state, a group of states, or under the direction of the Security Council to achieve deterrence, prevention, or the restoration or rehabilitation of damage caused by the state that has violated international law.



Economic warfare demands analysis of the operational element – the modalities and changing modalities for imposing coercion, and the prescriptive and normative elements – the authority and control imposed under law upon the policies, strategy and decision of the commander in warfare is in the strategic terms of reference.

As noted above, economic warfare demands analysis of the operational element – the modalities and changing modalities for imposing coercion, and the prescriptive and normative elements – the authority and control imposed under law upon the policies, strategy and decisions of the commander in warfare. Future developments will therefore range into the interaction of law, in part through anticipatory efforts in the adoption of “new” law, with the military operations and activities.<sup>165</sup> The behavior of states during warfare is in the strategic terms of reference either “tactical”, involving activities in which states are accommodating and opposing the policies and demands of each other, and “strategic” when they strengthen or add to the constitutive base of the public order.

But analyses of the policies and strategies of states, and their behavior reveal a factor of great importance: strategy with its policies, plans and programs, and its implementing strategies may adopt programs based upon naked power or upon law. But strategy, like deterrence, is policy oriented and policy directed, and expected under law to draw upon effective power, in the context of legal order.<sup>166</sup> Strategy in the operational phase depends upon perspectives at a given time, so that the objectives or principles of strategy may continue to have their impact, but new objectives may arise. Command of the sea thus is displaced by a strategy for strategic economic warfare.<sup>167</sup> Hence states that seek to strengthen law and the global legal order are certain to invoke law and appraise the applicable law in developing their strategy. This is evident in such activities as the drafting of rules of engagement applicable to the use of military forces.<sup>168</sup>

We can therefore assume that as states move toward a common legal order their strategy and strategies for using force will draw increasingly upon common perspectives about law, but while we can assume this, it would be incautious to presuppose law by the drafting of agreements or the formulation of resolutions in the global institutions. Law-making in this large and changing context will gain strength only if we recognize that it is law-making of a legislative nature, and that the legislation among states is the continuous application of practice imposed both through treaties and custom, and that the two necessarily interact and in these dangerous realms continuously throw up choices for the policy-makers. The changes considered in this paper particularly as we shift to the awesome area of strategic economic policy involve the situations of choice and the means to correct decisions that have gone awry.

A detailed regulation of economic warfare as such has not appeared in the practice among states. The general principles are those applicable to warfare in

general, relating to legitimate targets, force or coercion proportionately applied [often by the parallel use of military measures], and so on. As this inquiry suggests the reason for this is that the modalities of economic warfare, like that of warfare in general, evolve from the perspectives and tolerances of states about such warfare, and in particular, about the objectives that they are seeking. When they shift from specific identifiable economic targets or economic activities to the economy as a whole, then economic warfare and military warfare tend to merge as they did in the second World War. The participants expect at this stage that the war has intensified and that the stakes have increased. The participants expect greater violence and then exercise it, and the cycles escalate with growing intensity and growing expectations. The participants resort to new strategies and intensify those that they have adopted, especially in terms of the destructiveness of the war they have unleashed.

For this reason, the conclusion is reached in this paper that what we refer to as economic warfare is likely to shift from concepts of identifiable targets to concepts of the entire support structure essential to conducting hostilities, and targets shift to energy sources, railroads, and the infrastructure components of the community at large. This was even recognized at the Nuremberg Trials. Attempts to halt this trend have appeared, to be sure, but these have not established a foothold that would make them secure as the enforceable law. Thus, the provisions in the Geneva Protocols of 1977 to refrain from attacking energy sources and provisions for new protections of the environment and so on have been offered to strengthen the community attitudes toward humanitarian protections.

Economic sanctions, employing strategies of the global community, are aimed at the use of the economic instrument to manipulate the policies of others, to influence their decisions, and to reach community goals, pursuant to community standards. The economic instrument for both the sanctions and warfare may be coercive or non-coercive, as indicated earlier, or states may mix them together, always with the policy objectives in view. Economic warfare leads our perspectives toward the economy as a fundamental or crucial base of power, so that states that seek to destroy that base will tend even as in the wars of Greeks, Persians and Romans to destroy those they conquer, or subdue their inhabitants.

As the Gulf War has shown, our present attitudes reflect the hope that the calculus of risk and benefit involved in resorting to sanctions will be favorable in every sense: the costs will be reduced, human suffering eliminated or minimized, and so on. But economic warfare alone has not appeared in practice to have been effective, unless military measures accompany that practice. And economic sanctions set forth in the United Nations Charter as a strategy to invoke, are subjected to the caveat that if they are not perceived as effective, they will be accompanied by military sanctions. Economic strategies then may be applied before hostilities, during hostilities, and after hostilities, fashioned as

necessary, to achieve desired outcomes. All of these features are illustrated in the Gulf War, and open our inquiry in the future toward clarifying change in such strategies.<sup>169</sup>

While we can consider trends – whether they shift toward or away from enlarging warfare by enlarging the economic objectives and hence the measures to be adopted in war – we cannot predict the outcomes.<sup>170</sup> It would be foolhardy to predict the future of state practice in warfare – or in economic warfare – in view of the changing conditions and relations that affect the policies of states. As Churchill said in his eulogy to Chamberlain in the House of Commons, November 12, 1940:

It is not given to human beings, happily for them, for otherwise life would be intolerable, to foresee or to predict to any large extent the unfolding course of events. In one phase men seem to have been right, in another they seem to have been wrong. Then again, a few years later, when the perspective of time has lengthened, all stands in a different setting. There is a new proportion. There is another scale of values. History with its flickering lamp stumbles along the trail of the past, trying to reconstruct its scenes, to revive its echoes, and kindle with pale gleams the passion of former days. What is the worth of all this? The only guide to a man is his conscience; the only shield to his memory is the rectitude and sincerity of his actions. It is very imprudent to walk through life without this shield, because we are so often mocked by the failure of our hopes and the upsetting of our calculations, but with this shield, however the fates may play, we march always in the ranks of honor.<sup>171</sup>

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## Notes

\*National Defense University – Institute of National Strategic Studies. Georgetown University, National Security Studies Program. This paper contains only the opinions of the author, and they should not be attributed to the United States Government or Georgetown University.

1. Captain Hugh F. Lynch, in his paper on the “strategic imperatives” relating to economic warfare at sea, purposefully limits his inquiry into economic warfare in a warfighting context. This of course is the traditional context, premised on the expectation of strongly armed belligerents with strong navies that they could “reduce the enemy’s warfighting potential” by reaching that part of his economic power involved in his trade and access to goods across national borders. The term “imperative” is used to identify priorities in military objectives. The author has a companion paper to this, see Harry H. Almond, Jr., *An Assessment of Economic Warfare: Developments from the Persian Gulf* 31 Va. J. of Int’l L. 645–672, (1991).

2. See Ken Booth on the diplomatic instrument: Law, Force and Diplomacy at Seas, (1985); for a view by implication that the entire economy gradually verges on becoming a target for warfare, blurring the lines of discriminate warfare, cf M. Shulman, *Learning to Live with Authoritarian Regimes*, 55 Foreign Affairs 325, 337 (1977). Shulman notes that if our goal is to protect the economy, that of the aggressor is to attack it.

3. Klaus Knorr, *Power and Wealth*, 133 *et seq.*, (1973).

4. *Id.* at 136.

5. The changing methods of warfare, new weapons and agents used in attacks and hostilities, and changes in the organization of invoking violence have had their impacts leading to change in perspectives about neutrality as well as economic warfare, and they are indeed interrelated. As Myres S. McDougall and Florentino P. Feliciano have indicated in their *Law and Minimum World Public Order* (1961), the notions of neutrality had already begun to wear under the practice of World War I, and were replaced by qualifications of neutrality: “absolute neutrality,” “qualified neutrality,” “non-participation,” and “non-belligerency” were terms intended

to suggest policies that did not fit easily into the older notions of neutrality. This change, considered in depth in McDougal and Feliciano, was outlined in Lassa Oppenheim's *International Law* (1952) immediately after the second World War.

6. Expected patterns of behavior may be initiated or directed, so to speak, by the adoption of policies regarding coercion. Legal regulation of coercion imposed through economic measures invokes the same general standards as are used with military coercion or force, to wit, the principles associated with necessity, proportionality, and legitimacy of target. These principles are expressed in general language, and they are formulated for precise situations by accommodating to the conditions to which they are applied. Necessity for high intensity use of violence will differ and be less subject to constraint in state practice than situations in which the violence released and the conditions applicable to the use of force are less. Distinctions may also be made between the use of these principles when the time of reference differs, *i.e.*, the principles are under closer constraints at the initiation of aggression and with regard to responses to aggression than during hostilities or warfare. To make states more accountable there have been a number of proposals, enlarging upon the just war principles, to prevent precipitous or unconsidered uses of force, and to encourage a weighing of the factors that ought, by common sense, be assessed, even when the time is short. Speeches by former Secretary of Defense, Weinberger, and former Secretary of State, Shultz, suggest that there is no established policy or standards for making these assessments. Weinberger's six tests for using combat forces lean toward introducing major public participation, and toward making the determination about outcomes and success in achieving them, while Shultz is bent on the timely use of power justified by those uses of force where we are on the side of the good. These positions and debates on them appear in Ernest W. Lefever, ed., *Ethics and American Power* (1985), and the just war component is considered in A. Sabrosky & R.L. Sloane, *The Recourse to War: An Appraisal of the "Weinberger Doctrine"* (1988). The proposals for a checklist for decision makers is found in nearly every manifestation in which coercion or force is to be invoked, or where in on going hostilities new injections of force are intended. *Cf.* Nanda, *discussed in* Richard B. Lillich, *Humanitarian Intervention*, in John N. Moore, ed., *Law and Civil War in the Modern World*, 229, 248 (1974). [For forcible humanitarian intervention, Nanda calls for consent of the government involved; limited humanitarian purpose; duration of mission limited to accomplish limited objectives; limited use of coercive measures; and lack of other means to achieve objectives.]

7. Numerous writers have taken the view that economic warfare is to be broadly construed. See Williams, *15 Economic Intelligence and Economic Warfare*, in publication of ICAF (1954); M. Reder of Stanford University noted:

In any prolonged military struggle, the ability of a nation to survive and prevail obviously depends upon the extent to which it can continue to produce military equipment and sustain its population and armed forces. In the context of such a struggle, economic warfare is simply a matter of reducing the enemy's capacity to survive and preventing him from reducing yours. Reder, *Economic Warfare: Concept and Potential* (1962). [The entire paper pursues this larger perspective]. Of particular interest see Yaun-li Wu, *Economic Warfare* (1952). Wu states that the economic measures of warfare are "those international economic measures that through the play of economic forces could directly or indirectly reduce the economic strength, hence the war potential, of the enemy relative to our own." At 6 he differentiates between economic warfare in terms of the time of relations, *i.e.*, those during military conflict and all others.

8. Myres S. McDougal & Florentino P. Feliciano, *Law and Minimum World Public Order* (1961). [hereinafter McDougal and Feliciano] See especially the chapter on neutrality, of major relevance because economic war and the law of economic warfare, are found from the crosscurrents of perspectives about neutrality, warfare in general, and the specific problems of such measures as blockade, blacklisting, and so on. It is noteworthy that there are examples in history of nations destroying their rivals and leaving no trace. The attack on Carthage and its destruction nearly achieved this in recent history. It is possible that Nazi Germany had such objectives in view, at least with the peoples of some nations.

9. The economy or economic base of power of a nation is in modern warfare one of the targets of attack: though seemingly protected through the "humanitarian" laws relating to prohibitions against indiscriminate attacks against the civilians and civilian objects, the targets of strategic weapons, and the attacks mounted against cities, are clearly attacks intended to disable and breakdown the economy. The overall perspective of what constitutes such an economy, in military terms, is caught by Knorr:

Economic military potential is determined by the composition of resources as well as by their over-all magnitude. The production, maintenance, and use of armed forces require a variety of goods and services. . . . Most demanding are very complex weapon systems . . . which are within reach only of countries possessing the most highly developed technology. As GNP is an index of a country's

aggregate resources, so the composition of output reflects the structure of capacity. The composition of the national product is determined by three conditions of supply – manpower, natural resources, and man-made resources (capital and technology) – and by the structure of demand. Klaus Knorr, *supra* note 3 at 50.

And in 2 *Encyclopedia of Social Sciences* 90 Edwin R.A. Seligman, ed., (1930): "War, notwithstanding its numerous other affiliations, must be considered as a form of economic activity, for most wars or raids among primitive people are waged for the acquisition or retaliatory destruction of property, including the values inherent in human life." While applied to primitive people, the impacts of this activity in modern warfare remain largely the same.

10. Economic sanctions guided by the U.N. Security Council were imposed upon Iraq in the Gulf War of 1991. In his interview with U.S. Ambassador Glaspie, Hussein pointed out: "There is nothing left for us to buy from America. Only wheat. Because every time we want to buy something they say it is forbidden. I am afraid that one day you will say 'You are going to make gunpowder out of wheat.'" Citation in Nica L. Sifry & Christopher Cerf, ed., *The Gulf War Reader* 128 (1991). [Hereinafter Sifry and Cerf] Hussein also referred to Kuwait's intention to produce oil in excess of OPEC understandings as "some brothers are fighting an economic war against us. And that not all wars use weapons and we regard this kind of war as a military action against us." *id.*, at 131. His final remarks, though cryptic, suggested that the military option against Kuwait would be imposed on him if Kuwait did not change its policy. *id.*, at 133. The sanctions of the United Nations commencing with Resolution 661, 6 August 1990, were aimed at cutting off trade with Iraq. Various individuals argued that sanctions should be tried, and were even likely to work. See statements by former Chairman, Joint Chiefs of Staff, Adm. William J. Crowe, Jr., in Sifry & Cerf, at 234, 236:

In other words, I would argue that we should give sanctions a fair chance before we discard them. I personally believe they will bring him [Hussein] to his knees ultimately, but I would be the first to admit that is a speculative judgment. If, in fact, the sanctions will work in twelve to eighteen months instead of six months, a trade off of avoiding war, with its attendant sacrifices and uncertainties, would in my estimation be more than worth it. (From Testimony to Sen. Armed Services Committee, Nov. 28, 1990.)

Henry Kissinger observed that "the route of sanctions and the military option can be pursued up to a certain point simultaneously," and then it would be left to the military instrument *cited*, Sifry & Cerf, at 241. Brzezinski before the Senate Foreign Relations Committee on December 5, 1990 recommended a phased step-wise approach, but with stress on economic sanctions, and a warning against war *cited* Sifry & Cerf, at 251-54; Jimmy Carter on October 22, 1990 recommended negotiation, with King Hussein as the "key leader" in this effort *cited* Sifry & Cerf, at 225-27; and numerous other commentators and experts speaking before the Senate and House committees reinforced the views taken with studies purporting to show the effectiveness of sanctions. The attitude toward sanctions and easing Hussein toward the desired results may have conditioned his resolve, according to *The Economist*, *Kuwait: How the West Blundered*, *cited* Sifry & Cerf at 99-106. President Bush stuck mainly to the threat to use military force, and, of course, then resorted to it. See his speech of November 8, 1990, *cited* Sifry & Cerf, at 228.

11. The term "economic sanctions" is generally used to embrace "techniques and strategies for supporting public order," such as those adopted by the Security Council under its mandate in the United Nations Charter to maintain international peace and security. As Reisman indicates: "They [sanctions] cannot be divorced from the sociopolitical context in which they operate because they are integral to it." Economic sanctions have evolved to become strategies applicable during the entire spectrum of relations among states, and differ during peace and war largely to the extent that in wartime, the economic sanctions may be accompanied by military sanctions. And economic warfare traditionally part of the conduct of hostilities applies similar strategies as those applied in peace time, except for the qualifications arising from the greater intensity of violence: the targets selected, the destruction attempted, and the intensity of the strategies applied are likely to vary. See W. Michael Reisman, *Sanctions and Enforcement*, International Law Essays, 381, 383, 384 (Myres S. McDougal & W. Michael Reisman eds., 1981). The term "enforcement" according to Reisman "particularizes: a public order sanctioning system, i.e., it is a specific assembly of sanctioning programs designed to realize, in value terms, an identifiable authoritative prescription." *Id.*, at 405.

12. Closer attention to economic warfare and to the strategies of the targeting of the economies and goods of rival states is likely to have its impact upon military and diplomatic strategies, in large part because such attention will have its impacts upon the intelligence capabilities. Intelligence, in the largest perspective, comprises "the gathering, evaluation and dissemination of information relevant to decision-making, and may include prediction based on such information, as well as planning for future contingencies." For analysis see Myres S. McDougal, et.al., *The Intelligence Function and World Public Order*,

International Law Essays, 287 (1981). It is widely accepted that a substantial element of intelligence gathering is that focused on "economic" and "social" data, their evaluation, and the appraisal of their impact upon a nation's power.

13. Maritime strategy is generally formulated as a strategy of naval warfare, serving in the larger context of hostilities. A more complete perspective would embrace economic warfare, including the enlarged notion suggested in this paper, and the effect of such warfare in an enlarged perspective to deny or interfere with a rival's logistics, the capabilities to provide the material to its military forces, and the extent to which it can protect itself against attacks on its logistics and supply lines. Francis J. West, Jr. observes that a "Maritime Strategy is based upon concepts which transcend naval considerations," and citing Dr. Robert Wood of the Naval War College, states "any deterrence strategy that does not consider how the war will be fought and terminated is a hollow shell." With the shift to conventional wars;

The U.S. naval focus has been on persuading all U.S. Services that the issue is not a force structure debate. Rather, it is concerned with the need to develop a conventional warfighting concept, because the initiation of nuclear war is both militarily insensible and morally bankrupt - especially when rhetorically cited as a reason why wealthy nations do not have to provide prudently for their common defense by conventional means. Francis J. West, Jr. *U.S. Naval Forces and NATO Planning*, Naval Forces and Western Security, 2,8 (1987).

14. For a study of the strategic framework, see especially Sun Tzu, *The Art of War* 63-84 (Griffith, trans., 1963, 1976 [pbk]). The subject of strategy is of great importance, but ancillary, to this inquiry. See Basil H. Liddell Hart, *Strategy - the Indirect Approach*, (1954). For a general overview of the larger policy arena, see Harold D. Lasswell, *World Politics and Personal Insecurity* (1935).

15. Cf. Julian S. Corbett, *Some Principles of Maritime Strategy* 99 (1911) who notes:

Thus it comes about that, whereas on land the process of economic pressure, at least in the modern conception of war, should only begin after decisive victory, at sea it starts automatically from the first. Indeed such pressure may be the only means of forcing the decision we seek . . . [that] interference with the enemy's trade has two aspects. It is not only a means of exerting the secondary economic pressure, it is also a primary means towards overthrowing the enemy's power of resistance. Wars are not decided exclusively by military and naval force. Finance is scarcely less important. When other things are equal, it is the longer purse that wins. It has even many times redressed an unfavorable balance of armed force and given victory to the physically weaker Power. Anything, therefore, which we are able to achieve towards crippling our enemy's finance is a direct step to his overthrow, and the most effective means we can employ to this end against a maritime State is to deny him the resources of sea-borne trade.

16. In the "Crowe Memorandum" issued in 1906 by then Mr. Eyre Crowe from the British Foreign Office (*Reprinted in* Wishy, ed., *The Western World in the Twentieth Century* 1961) noted that ever since the writings of Mahan it was widely recognized among strategists that sea power "is more potent than land power, because it is as pervading as the element in which it moves and has its being:"

Its formidable character makes itself felt the more directly that a maritime State is, in the literal sense of the word, the neighbor of every country accessible by sea. *Id.*, at 74.

The primary thrust of the Crowe memorandum is to support England as the fulcrum to ensure a balancing of power against the outbreak of major hostilities, but he builds England's power upon its strength as a sea power. Crowe's memorandum supports the doctrine that a nation like Britain, to exercise its role, must have power in being: "the only check on the abuse of political predominance . . . has always consisted in the opposition of an equally formidable rival, or of a combination of several countries forming leagues of defense." *Id.*, at 75.

17. For an analysis of the Vietnam War applying for the analytical framework the military principles of war, see Harry G. Summers, *On Strategy: A Critical Analysis of the Vietnam War* (1984). Summers lists them under the objective, offensive, mass, economy of force, maneuver, unity of command, security, surprise, and simplicity. He also mentions planning, force planning and contingency planning as analytical components of preparations or readiness for war.

18. Carl von Clausewitz, *On War* 605 (Michael Howard and Peter Paret, ed. and trans., 1976). Clausewitz observed that the concept of war is that it is a "branch of political activity" and is "in no sense autonomous." *Id.* The link of policy cannot be severed from action, and the link of law to policy is fully established.

19. States operating under directives of the Security Council of the United Nations, may be directed under Article 42 to:

... take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 41 includes the power to direct actions to disrupt economic relations, communications, and so on.

20. The "principles" of war such as economy of force, objective, offensive and so on are designed to reflect state practice, experience and expectations in resort to the traditional military instruments of war. However, they have their counterparts in resort to economic warfare. See generally U.S. Department of the Navy, Office of the Judge Advocate General, *The Commander's Handbook on the Law of Naval Operations*, (NWP 9) (REV. A) FMFM 1-10, (1989), ch. 5. These principles are largely summed up under economy and efficiency, but they separately provide indicia, and lead in the military literature to "lessons learned", or to rules of engagement, all of vital, operational importance in the conduct of hostilities.

21. Cf. Derek W. Bowett, *Self Defense in International Law* 24 (1958) (hereinafter Bowett).

... there is something to be said for the view that economic or ideological aggression can be detrimental to a state's security and, if illegal, as dangerous a violation of the state's essential rights as the use or threat of force.

Bowett would thus permit, in the appropriate situations, the use of force for "economic" aggression, assuming it meets the standards of necessity, proportionality and relevance of target.

22. For an important assessment of this matter see McDougal & Feliciano *supra* note 8, at 196-202. These are problems that overlap aggression as well as the issue as raised during armed combat. The two authors citing Bowett, *supra* note 21, at 202, n.182 observe.

When the delict does not involve force or the threat of force, it would similarly seem arbitrary to deny to the defending state the right to use force in defence of its rights as a matter of fixed principle.

... The use of force as a reaction to a delict not involving force will scarcely ever be "proportionate" but there is no rule of law to say it can never be so. Bowett *supra* note 21, at 24.

The two authors continue in the note:

To accept Dr. Bowett's position is not to open a Pandora's box of real as distinguished from supposed evils. The tests of "necessity" and "proportionality" are not in any greater degree susceptible of abuse here than in other contexts, if the reviewing decision-makers desire to safeguard them from subverting misuse. Susceptibility to abuse is a common property of all legal standards and rules.

Coercion, they observe, is inevitable in state practice; community policy does not and cannot reach it and prohibit it, "without attempting to impose moral perfection, not to mention social stagnation, on humanity." *Id.*, at 197. The expectations of the target state are controlling however, and, in any event, Article 2(4) of the Charter does not exhaust the competence of the global community to intervene itself for police measures. [*Id.*, at 200, paraphrased]. They warn however against adopting such familiar phrases as "substantial" and "extensive" to characterize the coercion and the bright line change to the permissibility of using force. *Id.*, at 199.

23. The strategies of economic warfare must be judged against two categories: the strategy itself may involve an economic measure, such as freezing funds or bank accounts, or it may be an economic objective, later described in this paper as including the enemy's economy, and drawing that into the category of a legitimate military objective. Thus, the base for strategic strikes at the cities could be laid down as a strike for an legitimate object of attack. Expectations thus arose as to such strikes and to future strikes of this nature from the practice in the second World War. The Nuremberg Trials did not condemn such practices as such.

24. Reprisals are introduced to promote public order, and have an enforcing function as well as a punitive or correcting function. Moreover, their existence and their use also carry with them a deterrence function: states do not usually want to suffer a reprisal because the actions taken tend to be by methods of war that are not usually tolerable to themselves or their populations. Reprisals may be invoked at any time, wartime or peacetime. Cf. *Naulilaa Incident, Portugal-Germany, Arbitral Decision of 31 July 1928*, 8 Recueil des Decisions des Tribunaux Arbitraux Mixtes, 409, 422-425. Briggs indicates in a note that reprisals may extend to display of military or naval force, embargo, boycott, pacific blockade, bombardment or military occupation of territory. *Law of Nations* 958 (Herbert W. Briggs, ed., 2d ed., 1952).

25. The "Martens" clause in the Preamble to The Hague Convention No. IV of 1907 refers to the obligation of states to conform with practices expected among civilized peoples including "the laws of humanity and the dictates of public conscience." See also Article 22 of the Hague Regulations annexed to the Convention No. IV. These anticipate that the conduct of hostilities is to be regulated under law, but fail to provide pointers to the maintenance of public order. Such provisions were intended to reach technological developments in warfare that might not have been codified or adopted as customary international law.

26. For analysis, comment and examples see *The Naulilaa Arbitration*, *supra* note 24; Derek K. Bowett, *Reprisals Involving Recourse to Armed Force*, 66 Am. J. Int'l L. 1-3, 10-11, (1972); Richard A. Falk, *The Beirut Raid and the International Law of Retaliation*, 63 Am. J. Int'l L. 415, 437-442 (1969); former Secretary of Defense, Caspar Weinberger, Speech to National Press Club, November 28, 1984 (aimed at securing domestic support). If all uses of force under all circumstances are illegal, then a response by way of self help or self defense partakes of the same elements as a reprisal.

27. Friction, according to Clausewitz, is the element that is unclear and unpredictable in war. Hence,

This tremendous friction, which cannot, as in mechanics, be reduced to a few points, is everywhere in contact with chance, and brings about effects that cannot be measured, just because they are largely due to chance. One, for example, is the weather. Fog can prevent the enemy from being seen in time, a gun from firing when it should, a report from reaching the commanding officer. Rain can prevent a battalion from arriving, make another late by keeping it not three but eight hours on the march, ruin a cavalry charge by bogging the horses down in mud, etc.

On War 119 (Peter Paret & Michael Howard ed., 1972). "Everything in war is very simple, but the simplest thing is difficult."

28. The Geneva Protocols of 1977, to wit Protocol I, provide a number of restraints on attacks against the economy, but they are in the context of military attacks. Nonetheless, this would reduce the "economic warfare" that arises from a military attack on the economy as a whole. See Articles 51 and 52 mandating protection of the civilians and civilian objects, and Article 57 relating to precautionary measures with a view to protecting civilians in launching an attack. *Geneva Protocols*, Berne: I.C.R.C. Publication, (1977). The United States has not ratified the Protocols.

29. See McDougal & Feliciano, *supra* note 8, who have devoted a major book to this subject. Some of the features of this inquiry can be found in traditional sources, such as the chapters of Manual of Public International Law, ch.12 (Max Soerensen, ed., 1968). See, esp. the bibliography, *id.*, at 844-54. The author of this chapter, Krzysztof J. Skubiszewski, who argues that high intensity conflict, turning to weapons of high intensity destruction, lead to a change in law. With regard to economic warfare, he notes:

Economic warfare, starvation, blockades, obliteration bombing, including purposeful destruction of civilian targets such as residential areas hundreds of miles behind the frontlines, indiscriminate torpedoing of shipping, or use of long distance rockets and atomic bombs against enemy territory without discriminating between targets, are measures of warfare which have put an end to the inviolability of civilians and destroyed the basic distinction of the law of war, namely, the difference between armed forces and civilian population, and between military and non-military objectives. *Id.* at 803.

The existing law remains "in force" but loses its effectiveness: it is simply disregarded.

30. The ebb and flow of belligerent practice accounts for differing perspectives about the effectiveness of the law of war and as to future expectations about moderating its destructive force. Hersch Lauterpacht immediately after the second World War pointed out the limits in seeking to strengthen that law through treaties and international agreements. See, e.g., Hersch Lauterpacht, *The Problem of the Revision of the Law of War*, 29 Brit. Y.B. Int'l L. 360 (1952); Hersch Lauterpacht, *The Limits of the Operation of the Law of War*, 30 Brit. Y.B. Int'l L. 206 (1953).

31. See Soerensen, *supra* note 29, at 831, 839. Angary is a right to destroy or use neutral vessels in case of necessity, and according to some, such vessels may be captured in home waters, on the high seas, or in enemy territory. The right is subject to compensation. Economic warfare at sea is a special instance of economic warfare, fashioned by the conditions imposed by the use of the high seas, and the need to have appropriate naval forces for its effectiveness.

32. See discussion in Soerensen, *supra* note 29, at 753 *et seq.* This discussion, however, tends to ignore the distinction of reprisal from retorsion. The conceptual difficulty with reprisals is making the instrument operate as an instrument to promote public order, and to refrain from their operation as action-reaction measures untouched by the fundamental policy considerations and obligations of the parties. Reprisals and neutrality commenced in early belligerent practice but have been altered with modern practices of war. See George Schwarzenberger, *The Frontiers of International Law*, 104, 114 (1962).



33. McDougal and Feliciano, *supra* note 8 at 384. The discussion that follows in this portion of the paper draws upon the analysis of these two authors in ch. 5 of this book.

34. *Cited in id.*, at 388.

35. As we pursue the quest into minimum order, it is evident that the questions also include the responsibilities of the states participating, the burdens allocated amongst them, their tolerances as to the permissibility of coercion, the impact of such developments as the Covenant of the League of Nations, the Kellogg-Briand Pact (Pact of Paris, 1928), and the United Nations. Such questions raising perspectives among states have their bearing on the changing attitudes toward contraband, and toward opening blockade to long-distance blockades, changing the premises of the Declaration of London, 1909 that were conditioned on actual blockades. See McDougal and Feliciano, *supra* note 8, at ch. 5.

36. Robert H. Jackson, address to Inter-American Bar Association, Havana, March 27, 1941, 35 Am. J. Int'l L. 348, 349 (1941). He also pointed out:

I want the legal profession of this hemisphere to know that [U.S. decisions of policy] are being made in the conviction that the structure of international law, however apparently shaken, is one of the most valuable assets of our civilization. There may be differences of opinion as to some of its particular rules, but we have made conscientious effort to square our national policy with enlightened concepts of the law of nations viewed in its entirety. *Id.*, at 349.

*Cf.* Ian Brownlie, *International Law and The Use of Force by States*, 402-404 (1963), and *cited in* Marjorie M. Whiteman, 11 *Digest of International Law* 143 (1968).

The classical and positivist conception of neutrality which developed in the seventeenth and eighteenth centuries was one of complete impartiality towards the parties to any conflict unless a treaty of alliance modified the position. The foundation of the doctrine of absolute neutrality was the absolute right of the state to resort to war. With the appearance of categories of unlawful war in the League Covenant the doctrine of absolute sovereignty was modified although this modification took place in the special context of a collective security system.

*See generally*, Whiteman at 139-143 *et seq.*

37. *Id.*, at 349, 350.

38. See *supra* note 20, at 7-6, which states that with the United Nations, states may be subject to acting in accordance with Security Council directives. However, it points out that states must refrain from aiding states that are the object of such directives citing Article 43 of the Charter. A reading of this Article shows that while this and other provisions establish affirmative responsibilities they do not establish the negative responsibilities to refrain: these would have to be implied.

39. Jackson insisted on his primary claim that the United States was deliberately bending the rules of neutrality because this was justified under the Kellogg-Briand Pact, and because the doctrine of the just war supported his position. Moreover, he insisted that state practice showed that other states had done the same. He even added that the claim to support the United Kingdom on a discriminatory basis could be based upon self defense *supra* note 36, at 357. Moreover,

No longer can it be argued that the civilized world must behave with rigid impartiality toward both an aggressor in violation of the treaty and the victims of unprovoked attack . . . A system of international law which can impose no penalty on a law-breaker and also forbids other states to aid the victim would be self-defeating and would not help even a little to realize mankind's hope for enduring peace. *Id.*, at 358.

Jackson quoted from Elihu Root, a leading public official and lawyer, to the effect that "an international breach of the peace is a matter which concerns every member of the Community of Nations - a matter in which every nation has a direct interest, and to which every nation has a right to object." *Id.*, at 353.

40. Where it is argued that sovereign states are free to claim no control except their own will, they have no "legal duty to any other nation." Hence, "since there is no law binding it to keep the peace, all wars are legal and all wars must be regarded as just." *Id.*, at 350. Hobbes expressed the context:

To this war of every man against every man, this also is consequent: *that nothing can be unjust*. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice. Force and fraud are in war the two cardinal virtues.

Hobbes, *Leviathan*, in *The English Philosophers from Bacon to Mill*, 162 (E.A. Burt, ed., 1939). Hobbes elaborates on the just war thesis at length in subsequent pages. For major commentaries on the "just war," see James Turner Johnson, *Just War Tradition and the Restraint of War*, (1981); Paul Ramsey, *The Just War: Force and Political Responsibility* (1968); William V. O'Brien, *The Conduct of Just and Limited War* (1981). An attempt of a distinguished philosopher - Immanuel Kant - to lay down a framework of peace but entailing controls over the resort to force emerged from the earlier works of Abbe de Saint-Pierre, who had the practical experience as an envoy to the Peace Congress at Utrecht in 1712, and from the proposals of Leibniz and Rousseau. Kant's work on "everlasting peace" had six articles calling for peace settlements without secret reservations for a future war, a ban on acquisition of independent existing states, the absolute abolishing of standing armies, a ban on national debt "contracted in connection with the external affairs of the state," a ban on interfering "in the constitution and government of another state," and an undertaking that belligerents shall not engage in hostilities "that would make mutual confidence impossible during a future time of peace." Summarized in H. Trivers, *The Community of Man*, 34-35, (1977).

The arguments between former Secretaries of Defense and State, Weinberger and Shultz, discussed later on the use of force, appear in a policy vacuum: there are no official United States positions that have adopted either view or a combination of the two. One commentator argued that the "debate" was dangerous because it did not state clearly what the United States would do in resorting to force. Others argued that the two positions helped to clarify and lock in the United States policy process. For the arguments and discussions see, generally, *Ethics and American Power*, (Ernest W. Lefever, ed., 1984).

41. Jackson would find some support in the resolution of the Institute of International Law, 1963, cited in Soerensen, *supra* note 29, at 811:

... that there cannot be complete equality in the application of the rules of the law of war when the competent organ of the United Nations has determined that one of the belligerents has resorted to armed force in violation of the rules of the law of nations consecrated by the Charter of the United Nations.

But this is a reflection of action taken by the United Nations, i.e., the Security Council, or the permissive actions recommended by the General Assembly. Nevertheless, it is of interest in a United Nations that is gradually assuming authority as states express and reveal their will to operate under directives of the Security Council as in the Iraqi situation.

42. *Id.*, at 358. Jackson quoted from Grotius, "it is the duty of neutrals to do nothing which may strengthen the side which has the worse cause, or which may impede the motions of him who is carrying on a just war." *Id.*, at 351. Hence Jackson coupled the notion of the "just" war with the legal equality of belligerents under the law of war, indicating that the aggressor may have to shed some of this equality. This of course is an extreme position not widely adopted.

43. See generally, Daniel P. O'Connell, 2 *International Law of the Sea* 1094-1158 (Ivan Shearer, ed., 1988).

44. See generally, Julius Stone, *Legal Controls of International conflict*, (1973); Dietrich Schindler & Jiri Toman, ed, *Laws of Armed Conflict* (1988) provide the best source of the treaty laws and the source references; Edward N. Luttwak, *Political Uses of Sea Power*, (1974) is a valuable study of the resort to naval forces in "peacetime;" and Robert W. Herrick, *Soviet Naval Theory and Policy*, (1988) considers Soviet views as expressed by various Soviet spokesmen. See also, Daniel P. O'Connell, *Influence of Law Upon Sea Power*, (1975); Clark G. Reynolds, *Command of the Sea* (1983); the series published by the Naval War College at Newport, Rhode Island, called *International Law Studies*, are important source materials. The "science" of law is a science of accommodation among claims and claimants, with stress on methodology that must be flexible and able to adapt to changing events and perspectives. Thus, it varies from the hard sciences dependent on mathematical formulae and exactness. Cf. Mark Kac & Stanislaw M. Ulam, *Mathematics and Logic* (1968).

45. 1 U.S. Foreign Relations 36 (1928); quoted in *Law of Nations* 977-978 (Herbert W. Briggs, ed., 2d ed., 1952).

46. See, generally, Whiteman, *supra* note 36, v. 11, at 451 *et seq.* Cf. the Declaration of Panama, 1939, quoted at 451, in which the Latin American republics insisted on their "inherent right" to protect and defend themselves collectively. Other examples are given. The concept of self defense in World War II gradually expanded to counter the threat, so that the United States claimed neutrality even though providing military force to ensure the supply of goods to Britain.

47. Cited in *id.*, *supra* note 36, at 159.

48. Charles C. Hyde, 3 *International Law Chiefly as Interpreted and Applied by the United States*, 2315 (2d rev. ed., 1945), cited in Whiteman, at 474. Guggenheim is cited for the proposition that a belligerent subjected to neutral behavior favoring its enemy with military assistance as being the subject to aggression. *Id.*

It is evident that the Hague conventions and other instruments relating to neutrality are at risk with these changing expectations: many of them are gradually slipping into desuetude.

49. Seapower and Strategy (Colin S. Gray & Roger W. Barnett, ed., 1989).

50. A naval report of 1963 declared:

The primary role of seapower in our national military strategy is to contribute to our national readiness to project U.S. power overseas. Sea areas lie between us and any prospective allies. Extensive use of the seas is necessary for support of our allies and for the support of our own military forces on their soil. . . . These factors dictate an offensive naval strategy. Our Navy must be designed to carry the war to the enemy, both at sea and on land. In our early history the navy was frequently forced into a coastal defense strategy. It was only after we shook off the shackles of these defensive concepts that we were able to exploit our full potential and perform our primary mission—control of vital sea areas. *Cited in id.*, at 333.

According to an NSC Report of January 1977:

Sea control is the fundamental function of the navy; it connotes control of designated air, surface, and subsurface areas. It does not require simultaneous control over all waters but is exercised where and when needed. *Id.*, at 336

51. Admiral Louis Denfeld's Report of 1951, quoted in Gray & Barnett, *id.*, at 329.

52. *Id.*, at 345. Sea control, of course, is critical to the assurance of an economic warfare strategy. The expansion of such a strategy and of such control into policing and enforcing security against the international traffic in drugs is a current example of this strategy turned toward the economies so to speak of criminal commerce and trade.

53. *Quoted in Soviet Military Power*, 1990, 22-23 (1990). It is noted:

This recognition not only heightens the importance of political as distinct from military-technical variables in the security calculus, but places unusual emphasis on threat reduction, unilateral restraint, and collaboration with adversaries.

Past practice with the Soviet Union, however, suggests that such positions can be genuine, or they can be positions based on the elements of deception.

54. Admiral James D. Watkins, *The Maritime Strategy*, U.S. Nav. Proc. 4 (January, 1986). The view taken in the present paper is in the context of a larger, "grand" strategy that includes peacetime strategies, and continuous attention to building, during peacetime, the economic and related bases of power.

55. Cf. Manfred Eigen & Ruthild Winkler, *Law of the Game* (How the Principles of Nature Govern Chance) (1981). Though somewhat esoteric, the following observation is relevant:

Everything that happens in our world resembles a vast game in which nothing is determined in advance but the rules, and only the rules are open to objective understanding. The game itself is not identical with either its rules or with the sequence of chance happenings that determine the course of play. It is neither the one nor the other because it is both at once.

If arms control is a "game," then the rules [equilibrium, balancing, deterrence] may be objectively assessed, but arms control in the policy sense then becomes a matter that involves both the rules and the substance. Transformed to naval capabilities, we discover that the fundamental rule—equality of interests among the rivals that conclude the agreements—is not applicable.

56. Recent practice includes the Malvinas/Falklands War between the United Kingdom and Argentina. For a brief review of the maritime exclusion zones, see Robin R. Churchill & Alan V. Lowe, *Law of the Sea* 308 (1988).

57. The early law relating to neutrality was based, according to Schwarzenberger, on a single premise:

It was that, unless the contrary was established by treaty, all foreign princes and their subjects might be treated as enemies. Whether met on land or sea, they were fair prey. If a foreign prince or his subject were to expect any different treatment, they had to show that they were in a state of amity with the other Power concerned or at least protected by a treaty of truce or special safe-conducts.

George Schwarzenberger, *The Frontiers of International Law*, 12 (1962). The first English Proclamation of Neutrality was issued in 1536 by Henry VIII to reach those who sought to achieve as neutral goods the goods of a state in belligerency with England. [*Id.*, at 13]. For further studies see E. Turlington, 3 *Neutrality*, *World War Period*, (1976); S.W.D. Rowson, *Prize Law During the Second World War*, 1947 *Brit. Y.B. Int'l L.* A view

of a French authority of blockade during the first World War is that of Louis Guichard, *The Naval Blockade 1914-18* (1930).

58. See for a general assessment George S. Schwarzenberger, *International Conflict* 19 at chs. 52, 53, *et seq.* Cf., also Green H. Hackworth, *Digest of International Law*, § 627, at 134 *et seq.* on reprisals and the change in the tolerances as to the exercise of reprisals during the first World War. For a general survey, see Lassa Oppenheimer, *International Law* (Hersh Lauterpacht, ed., 7th ed., Part III 1952).

59. See James W. Garner, *Prize Law During the World War* (1927). Garner reviewed the jurisprudence of Lord Stowell in connection with his unwillingness to change and reshape prize law. See pp. xlv *et seq.* The prize courts depended primarily upon their municipal directives, *i.e.*, through statutes or legislation, to make their determinations. Garner assesses this practice in ch. 1.

60. Cited by Schwarzenberger, *supra* note 57, at 650.

61. See, generally, Herbert A. Smith, *Law and Custom of the Sea* (1959), reviewing the British position in the first World War, the Orders-in-Council, rejecting the Declaration of London. Smith cites the orders involved. It is evident that the British had turned to long-distance blockades, which they believed critical to their defense, and thus had broken through the restraints of the Declaration that limited blockades to close-in actions.

62. *Id.*, at 246.

63. Cf. Schwarzenberger, *supra* note 57, at 650-651. See also Hackworth, *supra* note 58, at 142 *et seq.* Belligerent states are shown to stumble intentionally over the language of their treaties like the Declaration of London, and over the semantics of language. The matter of blockade is covered by the citation from Hackworth.

64. States adopt among other goals the sanctioning goals of prevention and deterrence. In terms of a peacetime strategy [employing either or both persuasive or coercive measures], Western states alert to the ultimate need for global order must take steps to ensure that the Soviet Union does not become again the awesome threat that it was when its economic base of power was sufficient to amass its present arsenal. For an analysis of the strategies in the coercive context of military force, but with clear analogies to an analysis of strategies other than military strategies, see McDougal and Feliciano, *supra* note 5, at 287-96. The strategic goal in the global arena according to these two distinguished commentators is to establish global public order affording security, preservation of fundamental values, and order among states as a whole, not maintaining public order precariously through competing and contending states.

65. A full discussion of the use of Western funding and subterfuge in doing so for Soviet exclusive and power goals is set forth in Judy Shelton, *The Coming Soviet Crash*, (1989). Shelton shows the linking up of trade and trading links and dependencies, of funding to the Soviet Union, enabling it to maintain, as it currently does, a major military and military related effort, as well as extravagances such as major activities in outer space, and major funding of naval forces, and of commercial ventures. The Western states cannot impose effective restraints upon Soviet uses of funds, nor prevent it from acquiring and augmenting its technologies for strategic and military purposes. This could however be reversed by the adoption of appropriate strategies that should couple such support with clear showing of Soviet progress in democratic efforts, or toward democratic values.

66. By way of comment here: the disturbing element of false allegations is almost treated as permissible act of deception by belligerents in justifying their own actions. False allegations were made in the Korean War of 1950 by the North Koreans and Chinese that the United States had resorted to bacteriological warfare, and "confessions" extracted from prisoners of war, but these ceased when the United States demanded an investigation by the International Committee of the Red Cross.

67. George S. Schwarzenberger, *International Law as Applied to Armed Conflict* 647 (1976). Footnotes and citations omitted. Reprisals and counter-reprisals soon dissociated from the legal framework made up much of World War II practice. Adoption of war zones, extensive mine-fields, and sink at sight practices further reduced the certainty of neutrality and its controlling law. As Schwarzenberger points out:

... all that has happened is that, in two major wars, both sides have done their best to interpret to their liking unsettled and controversial points of law and found it convenient to justify their own action by alleging breaches by the enemy of the same law, now more strictly interpreted. *Id.*, at 651.

Total war, he believes, as did Lauterpacht, would lead to the end of the law of neutrality, and, in effect, of international law itself.

68. William N. Medlicott, *The Economic Blockade*, (1952). The basic principles recognized by the British prize courts follow the rules of the Declaration of Paris, 1856, and Article 2, Declaration of London, 1909, to wit: blockade to be binding must be militarily effective; only a belligerent can establish a blockade; duly declared and notified as to exact geographical limits and days of grace for neutral ships to leave the area; and, limited to ports and coasts of the enemy. *Id.*, at 4. These rules like the others relating to economic warfare were to be stretched during the war.

69. *Id.*, at 2. All measures of belligerency are treated under law as matters awaiting the practice of belligerent and neutral states because that practice determines the tolerances among states as to belligerent conduct. The process necessarily calls for flexibility and adaptation, and for a conception of law that is emerging and readily subject to the impacts of new methods of warfare.

70. *Id.* at 17. Three categories of economic warfare weapons were mentioned: legislative action reaching financial and commercial activities; diplomatic action to reach the neutrals; and military action in the broadest sense. The measures would include (1) interruption of supplies from overseas as contraband; (2) withholding supplies under the control of the U.K.; (3) offers to purchase guaranteed quantities of goods to remove them from the market; and (4) shipping control, and statutory listing, such as the navicert, etc. *Id.*, at 17-22.

71. 2 *id.*, at 11.

72. See generally, Schwarzenberger, *supra* note 58, at 644 *et seq.* Angary is supported by the legal authority of a belligerent to requisition [but pay for] a neutral ship. The requisition of a neutral ship is a form of economic coercion against neutrals. Angary under international practice requires that the taking be limited to the ship and not include the cargo, be taken upon a showing of military necessity or public need, and be covered by full compensation for use or destruction of the ship. *Id.*, at 636. Related legal institutions that might be considered include maritime seizure of all ships providing assistance to the enemy, embargo or prohibition on shipping, requisition under municipal law, thereby avoiding the restraints of international law relating to angary, eminent domain, arrest of princes [*i.e.*, and effective in peacetime as well as wartime], and expropriation, illustrated in distinction to angary by the United States requisition of contracts for uncompleted ships in her shipyards in World War I *Norwegian Shipping Claims Case, 1922. Id.*, at 640-641.

73. 2 Medlicott, *supra* note 68, at 15.

74. For further analysis see Stone, Schwarzenberger, Colombos and Tucker, *op.cit.* It is evident however that the Security Council's resolutions are drafted by the permanent and other members of the United Nations, so that the language can be ambiguous, or be drafted to enable them to avoid actions they do not want to take. Article 50 the United Nations Charter affords states the right of consultation with the Security Council when a member facing preventive or enforcement measures "finds itself confronted with special economic problems arising from the carrying out of those measures."

75. Cited in Whiteman, *supra* note 36, at 451.

76. The applicable law is sometimes divided into the law of war that includes both customary international law, treaty law, and the principles such as the principle of military necessity. The application of the principle of military necessity has not yet been given the refining assessments that are made with the use of force. Belligerents are to refrain from causing unnecessary suffering, using disproportionate force, or striking non-military targets. However, if economic warfare includes forcible actions against cities or other strategic targets involving the economy, or is applied through forcible measures, then these principles and standards are readily applied. See generally, Law of Naval Warfare, in Appendix, at 357 *et seq.*, of Robert W. Tucker, The Law of War and Neutrality at Sea, International Law Studies (1955).

77. Article 0605, Observance of International Law, in U.S. Navy Regulations 1973, declares:

At all times a commander shall observe, and require his command to observe, the principles of international law. Where necessary to fulfillment of this responsibility a departure from other provisions of Navy Regulations is authorized. quoted in (NWP 9) (REV.A)FMFM 1-10, see *supra* note 20, at 4.

78. Rules of engagement in the United States practice include in those rules directives that are guided by international law. Many remain classified. If they, and the rules of other states can be declassified and harmonized as to policy or content, they would afford an additional and important source of international law, feeding practice and action into the legal regime.

79. Cf. Stone, *supra* note 44, at 411 *et seq.*

80. *Id.*, at 413 *et seq.*

81. Neill H. Alford, Modern Economic Warfare, International Law Studies, 1963, (1967). Alford is the source of much of the discussion that follows.

82. *Id.*, at 1.

83. Stone, *supra* note 44, at 600

84. Stone, *supra* note 44, at 607, n.27

85. Cited by Alford, *supra* note 81, at 19.

86. The importance of strategy to the emerging law is readily perceived in the writings of the strategists themselves. See, e.g., Sir Julian S. Corbett, Some Principles of Maritime Strategy, (1982); James Cable, *The Diffusion of Maritime Power*, International Relations, Nov. 1982 (considering the appearance of new naval vessels); Michael E. Howard, *The Classical Strategists*, from Studies in War and Peace (1970) (reviewing the appearance of the nuclear weapon, and its use, even for deterrence, to be that of the threat against cities); Aaron L. Friedberg, *A History of the U.S. Strategic 'Doctrine' - 1945 to 1980*, Journal of Strategic Studies, 37 (Dec. 1980) (with the interesting observation that strategies depend upon an intended use of weapons, so that

a no-first-use or non-use strategy with nuclear weapons would be meaningless); Fritz Ermarth, *Contrasts in American and Soviet Strategic Thought*, Soviet Military Thinking (Derek Leebaert, ed., 1981).

87. Alfred T. Mahan, *The Influence of Sea Power Upon History*, (1890). Mahan's remarks about the study of history to ascertain strategy and the development of naval tactics points out that "theories about the naval warfare of the future are almost wholly presumptive." The theories offered have not been tested. The practice of states instead suggests the continuing modification of naval vessels, and with the new weaponry, the modification of naval tactics from close-in fighting to fighting that may be distant and between fleets that never see each other. Cf. Ram P. Anand, *Origin and Development of the Law of the Sea* (1983). Anand traces the economic and military strategies and coercion in the Indian Ocean, and in the Far East in general. The rulers subjected to European aggression had practiced freedom of the seas in the Indian Ocean and adjacent seas. *Id.*, at 21. Mahan further observes that the freedom of travel or navigation across the seas has been established over long practice, and this states seek to protect or if need be defend:

The first and most obvious light in which the sea presents itself from the political and social point of view is that of a great highway; or better, perhaps, of a wide common, over which men may pass in all directions, but on which some well-worn paths show that controlling reasons have led them to choose certain lines of travel rather than others. These lines of travel are called trade routes; . . . *Id.*, at 25.

Hence the wealth of sea-faring nations is to be found in the strengthening of their sea power, and to protect that wealth and access to it, they create their naval forces:

In these three things—production, with the necessity of exchanging products, shipping, whereby the exchange is carried on, and colonies, which facilitate and enlarge the operations of shipping and tend to protect it by multiplying points of safety—is to be found the key to much of the history, as well as of the policy, of nations bordering upon the sea. *Id.*, at 28; see also at 53.

The general theme is picked up by British commentators. See, e.g., Herbert W. Richmond, *National Policy and Naval Strength* (1928); Julian S. Corbett, *Some Principles of Maritime Strategy*, (1911).

88. Much of this development can be traced in C. John Colombos, *The International Law of the Sea*, (6th ed., (1957). § 720.

89. *Id.*, at 2

90. *Id.*, at 4

91. Sergei G. Gorshkov, *Sea Power of the State 1-2* (1979). Imperialism, Gorshkov insists, compels a major naval force, essential to the security of the Soviet Union, and essential for ensuring "its interests" at sea. The imperialists he believes use sea power for aggression aimed at third countries, and aimed at holding their military blocs in check, as well as an instrument to threaten communism.

92. *Id.*, at 280. The change in naval force has led to a change in strategy – and this under one of the themes in my paper has led to a dynamic situation for the emerging law:

The revolution in military affairs has led to substantial shifts in all fields of military theory and practice. It has also brought changes in the organization of the navy, invaded the field of naval theory and touched on the content of naval art from tactics to the strategic use of a navy. This has brought in its train the elaboration of modern naval art, characterized by new categories and a kind of distillation of former concepts and principles. *Id.*, at 281–282.

93. *Id.*, at ix. Gorshkov's perspective is primarily in terms of the American threat, and countering that threat, militarily and politically. This would be deceptive if the view were taken that with the diminishment of the Soviet threat the United States faced neither threats, objectives, nor missions for a large, and varied, navy.

94. See McDougal & Feliciano, *supra* note 8, at 477 *et seq.* The techniques extend from more narrowly constricted war zones, declared and defined in extent by the belligerents, but dependent upon their ability to enforce those zones, to a series of "comprehensive administrative techniques of economic warfare."

95. *Id.*, at 488 *et seq.*

96. *Id.*, at 480.

97. See *id.*, at 484, n. 242.

98. See Myres S. McDougal, *The Soviet-Cuban Quarantine and Self-Defense*, 57 Am. J. Int'l L. 597 (1963).

99. See discussion in McDougal & Feliciano, *supra* note 8, at 494 *et seq.*

100. For several views on this problem see the selections in Lillich & Moore, 62 International Law Studies (1980), e.g., S. Rosenne, *International Law and the Use of Force*, 1., laying down a framework of standards for considering the use of force, J. McHugh, *Forcible Self-Help in International Law*, 139, providing some of the traditional views, W. O. Miller, *Belligerency and Limited War* 164, and J. McNulty, *Blockade: Evolution and Expectation* at 172.

101. Miller, *supra* note 100, at 168.

102. Ultimately, the entire law of commerce control becomes one in which the enemy subjected to a superior rival in terms of command of the seas would be unable to trade. This came through military capabilities that could impose controls on export and import of goods, thus combining practices involving the administrative controls over contraband, and blockade, reaching goods whether of enemy destination or enemy sources. See McDougal and Feliciano, *supra* note 8, at 508-509. The authors further review the use of navicert, which, once issued, enabled the neutral to avoid seizure and condemnation, and "rationing" which determined the quotas of the neutral, its needs in material resources, and the undertaking to keep to those quotas, or be subject to the excess being condemned or destroyed. The prize courts applied these administrative measures, giving them the force of municipal law, in an international context. In addition to these, World War II brought "black listing," to identify neutrals engaged in conduct inconsistent with the above measures; economic measures that led to high prices, cutting off sources of supply, sabotage, robbery, and preclusive buying. *Id.*, at 518-519.

103. Quoted, Marian C. Siney, *The Allied Blockade of Germany, 1914-1916*, 10 (1957). Hankey is thus a voice among those who would support regulation of economic warfare largely by customary international law rather than by the more rigid legislative approach of such treaties as the Declaration of London. The Declaration of London though never ratified nor in force contains much that is ascribed to customary international law relating to neutrality, blockade, and economic warfare. For discussions, see *The Law of Naval Warfare* 269 [Essay by Kalshoven], (Natalino Ronzitti, ed., 1988); A. Cohen, *Declaration of London* (1911); James B. Scott, *Declaration of London*, including documents and negotiating record, (1919); the text in *International Law Topics*, (1910); and the related materials in Harold H. Martin & Joseph R. Baker, *Laws of Maritime Warfare*, (1918) and in Maurice Parmelee, *Blockade and Sea Power*, (1924).

104. The United States Department of Defense in *Soviet Military Power* 1990, 88 (1990), states:

The Soviet Navy's vital strategic forces, defensively oriented missions and strategy, and exclusion from current CFE [Conventional Force Europe] negotiations, might place it in a better position than the other branches of the Soviet armed forces to weather Gorbachev's program of defense drawdowns. Despite some reductions in operating tempo, out-of-area deployments, and changes in force structure, Soviet naval missions remain virtually unchanged. Current modernization programs, if successful, could make the Soviet Navy a smaller yet qualitatively more capable force while projecting a less threatening image abroad.

The same publication indicates a decline in Soviet naval launchings, but the appearance of higher degree of sophistication and technological standards. *Id.*, at 36.

105. See Harriet F. & William F. Scott, *Soviet Military Doctrine*, (1988), for an assessment and analysis of existing Soviet military thinking, and the interaction of such thinking with communist doctrine. Even if the communist doctrine is eliminated, the military principles relating to correlation of forces, superiority of weaponry, anticipatory or pre-emptive strikes, and so on are likely to remain unaffected should the military forces be called upon to act: much of the discipline, training and theoretical science is too deeply instilled to expect change in the next decades. See *id.*, at 130 *et seq.* The Scotts trace the evolution of Soviet strategy and military thinking, much of which includes the assumption that the Soviet economic base will be sufficient to sustain a major military effort. The laws of war though evolving and being altered to meet changing realities are intended to clarify and lead to economies in decisions, formulating combat operations, and in achieving victory; they are said to "determine the choice of form and methods of military action." *Id.*, at 158. According to the Scotts, the Soviet elites have not changed their political goals or military terms of reference:

They stress that the total correlation of forces - economic, scientific-technical, moral-political, and military - must be kept in their favor. Stability in international affairs is not a desired goal. . . . It would be prudent for Western planners to consider that the real reason for [Gorbachev's] "restructuring" is to ensure that the laws of war are kept in the Kremlin's favor. *Id.*, at 159.

106. According to the inquiry made by Reynolds, thalassocracies means "maritime supremacy." This according to early historians is "the control of the sea lanes and islands by one state to insure its economic prosperity and thus its political integrity." Only six appear in history: the Minoans, ancient Athens, Venice and Florence in the Renaissance, the Netherlands, Britain and the United States. Maritime states are characterized by free enterprise, market economies, individual initiative, technological change, and so on. Clark G. Reynolds, *History and The Sea*, 20 *et seq.* ch. 2 (1989). Reynolds argues that unlike Marxian views where economic motivation is primary, the motivation of the maritime states is more complex promoting the shaping and reshaping of business forms and relationships. For a detailed study, see *The U.S. Stake in Naval Arms Control*, (1990).

107. The Adderbury Conversations, in Appendix I, of Eric Grove, *Maritime Strategy and European Security*, 91 (1990). The conversations and the strategic dialogue of November 17-19, 1989 provide a valuable

set of statements concerning the position of both sides. The United States pointed out in the second meetings that:

The Maritime Strategy is not a war plan but a concept of operations for US Naval forces. It reflects the best naval experience and the advice of the responsible theatre commanders covering contingencies from routine peace to global war. Equally it is not a 'go it alone' US Navy strategy but the maritime component of national strategy. It reviewed and restated the explicit thinking of US civil leaders and their tasking to the naval forces deployed (a) to defend US and allied interests, (b) to control vital sea lines of communication with allies and (c) to conduct counter offensive operations, if necessary, in both US and allied defence. . . . [it] emphasized the role of joint and combined forces in the event of war. It recognized from the beginning that navies alone cannot win wars but they can lose them. *Id.*, at 119.

108. Alfred T. Mahan, *The Influence of Sea Power Upon History, 1660-1783*, (25th ed., 1917). Mahan further observes that history has a value in the field of naval strategy, because in large measure the principles of strategy unlike those of tactics reaches to a broader base. Citing a French authority, Morogues:

Naval tactics are based upon conditions the chief causes of which, namely the arms, may change; which in turn causes necessarily a change in the construction of ships, in the manner of handling them, and so finally in the disposition and handling of fleets. *Quoted, id.*, at 10.

Hence,

The battles of the past succeeded or failed according as they were fought in conformity with the principles of war; and the seaman who carefully studies the causes of success or failure will not only detect and gradually assimilate these principles, but will also acquire increased aptitude in applying them to the tactical use of the ships and weapons of his own day. He will observe also that changes of tactics have not only taken place *after* changes in weapons, which necessarily is the case, but that the interval between such changes has not been duly long. *Id.*, at 9.

109. *Dissenting opinion*, In re Yamashita, 327 U.S. 1 (1946).

110. Charles M. Sternhell & Alan Thorndike, *Antisubmarine Warfare in World War II. Operations Evaluation Report #51 xi* (1946).

111. Brian McCue, *U-Boats in the Bay of Biscay: An Essay in Operations Analysis 176-77* (1990). Footnotes omitted in the citation.

112. For a comprehensive analysis see Clark G. Reynolds, *History and the Sea* (1989). In the discussion in this paper, it should be noted that Soviet military doctrine does not call for its forces to act defensively in combat, and in fact the capability of Soviet forces to act either offensively or defensively as needed. See *id.*, at 205.

113. *Id.*, at 85.

114. Force planning is described in detail in Robert P. Haffa, Jr., *Rational Methods, Prudent Choices: Planning U.S. Forces* (1988). Maj. William Huggins in a letter to *Defense News*, 18 (April 20-26) elucidates this interaction:

Deterrence is based on threats: those received and those sent. It demands a force structure based on survivable offensive weapons capable of inflicting unacceptable destruction. The enemy must know we can and will use these weapons. The ability to compel an enemy is based on capability and the sort of flexible, durable, lethal forces that can enter a conflict and win. The debate over threat-vs-capability-based force structures is a debate over deterrence vs. the ability to compel as the basis for a national military strategy.

Huggins thus finds an interaction between deterrence, defense, and effective use of strategy and strategic instruments to assert national power.

115. See Lester Nurick, *The Distinction between Combatant and Noncombatant in the Law of War*, 39 Am. J. Int'l L. 680 (1945). Trends, according to Nurick, are toward breaking down the distinction. Nurick's paper indicates that this has occurred through a widening of the "necessity" in warfare, affected in turn by the changes in technology.

116. The elements of control are to be found in various instruments: concepts, terms relating to the relations involved, and a theory have been described as essential. For a study, see E. J. Meehan, *The Thinking Game* (1988). The paper stresses that these elements emerge from the actions states are taking, and to define them, or even to impose legal standards on those actions *i.e.*, here, the standards of permissibility calls for



institutions with law-making authority in the legislative rather than the judicial sense. Almond has criticized the International Court of Justice as acting *ultra vires* in *The Nicaraguan Military Activities Case Nicaragua v. United States of America*, 17 Cal. W. L. J. 146 (Winter 1987). The case is at 1986 I.C.J. 14.

117. The significant element with respect to deterrence in peacetime is its political character, *i.e.*, it operates through the interaction and interdependence of decisions made by the public officials in charge of foreign policy. Military capabilities serve, but are subordinate to, political objectives and the operation of deterrence is primarily in the hands of civilian public officials. War in this perspective is the breakdown of deterrence. The operational element or that upon which the deterrent effort is focused is that of intentions or expectations of those to be deterred, *i.e.*, the objective is to assure that they will not oppose deterrence, or act inconsistent with the expectations of deterrence. In some of the broader manifestations or notions about deterrence it may be expanded to include compellence, in which others are pressed to act in a certain way and are "compelled" by threats or action if they refuse. Examples might be found in the attempts to compel Iraq to fulfill United Nations Security Council Resolutions.

118. Liddell Hart, *Strategy: The Indirect Approach*, (1954).

119. On these factors, *see generally*, Edward Luttwak, *Strategy: The Logic of War and Peace* (1987), esp. the introductory chapters. Thomas C. Schelling argues that strategy is the outcome of the strategies invoked by the rivals, and that their arena is in a sense a "game." Assuming that the game itself remains in force - *i.e.*, the checks and balancing of deterrence and the principle of equilibrium - then "the best course of action for each player depends on what the other players do. The term is intended to focus on the interdependence of the adversaries' decision and on their expectations about each other's behavior." Thomas C. Schelling, *The Strategy of Conflict* 3 (1960). Considered as claims between the rivals, there is a similarity here to the fundamental process of claim that is found in the emergence of law through the patterns of behavior of those participating in interactions about relations or activities among states [or among states and other entities and individuals in trade and commerce].

120. Deterrence in war differs from deterrence in peacetime: during war, the attempt is to deter attacks or the use of particular weapons; during peacetime, it may be limited to the weapons covered by a specific "arms control" agreement, but it is generally aimed at the broader deterrence: that is, deterrence against a military strike, aggression, or war itself. In his discussion of national maritime strategy, Admiral James D. Watkins remarked:

Our national military strategy is designed: to preserve this country's political identity, framework, and institutions; to protect the United States, including its foreign assets and allies; to foster the country's economic well-being; and to bolster an international order supportive of the vital interests of this country and its allies. To achieve these ends, our national strategy is built on three pillars: deterrence, forward defense, and alliance solidarity. James D. Watkins, *Maritime Strategy* U.S. Nav. Inst. Proc. 4 (January 1986).

This is a version of the "grand strategy," encompassing the elements of national power and national purpose.

121. Thomas C. Schelling illustrates "compellence" and distinguishes it from deterrence in the following example:

Blockade illustrates the typical difference between a threat intended to make an adversary do something and a threat intended to keep him from starting something. The distinction is in the timing and in the initiative, in who has to make the first move, in whose initiative is put to the test. To deter an enemy's advance it may be enough to burn the escape bridges behind me, or to rig a trip-wire between us that automatically blows us both up when he advances. To *compel* an enemy's retreat, though, by some threat of engagement I have to be committed to *move*. . . . The threat that compels rather than deters often requires that the punishment be administered until the other acts, rather than if he acts. Thomas C. Schelling, *Arms and Influence* 69, 70 (1966).

122. Deterrence through threats of economic sanctions, or economic warfare, is a tenuous notion, and in any event, untested. In the traditional perspective, deterrence reduces the likelihood of military moves, and is distinguished from defense which reduces an attacker's capabilities to damage his target. Introduced into arms control relationships, there is an interaction of threatened coercion and the assumption that the target state will refrain from using force. One commentator has indicated:

Military strategy has always influenced the character of a period, and particularly the nature of its international relations . . . Strategy has been transformed into the art of non-war, of the prevention of war . . . Prevention of war is achieved by the threat of violence, that is, by the threat of retaliation in response to a provocation. Strategy has changed from the art of employing violence into the art of

threatening violence, which is the art of deterrence. Yehoshafat Harkabi, *Nuclear War and Nuclear Peace* 1 (1966).

This commentator observes that deterrence has long served the international relations among states, always to deter potential aggressors. But deterrence depends upon war making potential, or it is an empty threat. As Harkabi point out "war making potential is intended to validate deterrence," and this of course is a potential in being, not a potential that might be attained, given enough time. The problem thus leads to a shift in the policy making of states from the decisions primarily dependent upon the perspectives of the military commander, and his perspectives, to the civilian officials of government, and theirs. But as Clausewitz has indicated, the public official must seek out and embrace the advice of his military commanders. Without adequate understanding of the needs of deterrence and the urgencies that might be imposed to achieve deterrence capabilities, the public official is poorly served by his advisers, or fails, through his own incompetence to understand the import of their advice. See Glenn H. Snyder, *Deterrence and Defense: Toward A Theory of National Security* 3, 4 (1961); Thomas C. Schelling and Marton H. Halperin, *Arms Control and Strategy*, 20th Century 77 (1961); economic strategies under the GATT and in general in economic relations among states can be followed in J. H. Jackson, *Legal Problems of International Economic Relations*, (1977), and see Abram Chayes, *et al.*, *International Legal Process* (1969).

123. Report of the President's Commission on Strategic Forces, [The Scowcroft Report], 2, 3 (April 1983). See also, generally, *Discriminate Deterrence*, the report of the Commission on Integrated Long-Term Strategy (January 1988).

124. States may seek to manipulate the public opinion of each other particularly where that opinion is an element of public participation in policy or decisions. As to this democratic states are more vulnerable than totalitarian states where public opinion and the means to be informed to participate are closely controlled. For a review of the spectrum of state relations extending from periods of high intensity violence or warfare, or high intensity coercion, to periods where these are minimal, see McDougal and Feliciano, *supra* note 8, ch. 2, at 97 *et seq.* See *id.*, at 106:

The first step [in ascertaining a state of war] we submit toward contact with reality is reference to and careful orientation in, the factual process of coercion across national boundaries. . . . The description we suggest of factual coercion in terms of "process" is intended, however, not merely to convey a sense of the variety in participant, purpose, modality and claim, but also to stress the facts of continuity - continuity in coercive action and reaction and in assertion and counterassertion - and of changing intensities in degree, from the mildest to the most severe applications of coercion. Between the two extremes of "pure" peace and "total" war, the states the world arena may in these terms be observed continuously to engage each other for power and other values, by all instruments of policy in a continuum of degrees in coercive practices, ranging from the least intense to the most intense. [stress by authors; n. omitted].

125. See, generally, Carl von Clausewitz, *On War*, (Michael Howard & Peter Paret, eds., 1976).

126. John M. Collins, *Grand Strategy*, 4 (1973).

127. Strategy, as traditionally conceived, is linked with the traditional methods and weapons of warfare. Even the conception of war remains a matter of great ambiguity, *cf.* McDougal and Feliciano, *supra* note 8; see also Julian Lider, *Problems of the Classification of Wars* (1960); W. V. O'Brien argues that "recourse to armed coercion is a perennial feature of the human condition," and implies that with changes in human attitudes we will see changes in warfare, and the law that regulates it, William Vincent O'Brien, *The Conduct of Just and Limited War* 2 (1981). The O'Brien text is aimed at the attempts made to regulate through the just-war tradition.

128. Power, and effective exploitation of the power process, is not the only value that is sought by states, but it is the value upon which all others depend in periods of competition with others over power itself, or over resources and wealth that may be dependent upon the presence or exercise of power. See, generally, Harold D. Lasswell & Abraham Kaplan, *Power and Society* (1950), and general discussion at xiv-xix, and 74-102. The broad perspectives of these authors identify power as "participation in making of decisions," and therefore establish a comprehensive framework for appraisal of who has power to do what, against whom, and for what objectives. The quest for power establishes both a nation's strategy and the fashioning of strategic instruments intended economically to attain and preserve power.

129. William V. O'Brien cites one formulation of the principle of economy of force as that used by the United States Army in 1964, *i.e.*,

Economy of force is the measured allocation of combat power to the primary task as well as secondary tasks. It connotes the application of force necessary to accomplish the mission and not the application of as little force as possible. To concentrate superior force in the main effort, minimum

necessary force may be used elsewhere. This requires a careful evaluation, particularly where secondary efforts contribute heavily to the main effort. O'Brien, *supra* note 127, at 418.

Economy of force and its relation to the principle of military necessity are discussed by McDougal and Feliciano, *supra* note 8, at 35-36. The pressure on military commanders to achieve economies of their scarce military resources draws them tightly into line to achieve both an economy of force and to reflect the application of military necessity.

130. Alfred T. Mahan, *Naval Strategy* 6 (1918). Speaking broadly of principles, Mahan noted their role in naval strategy as broad guidelines but largely immutable:

... for in war the common sense of some, and the genius of others, sees and properly applies means to ends; and naval strategy like naval tactics, when boiled down, is simply the proper use of means to attain ends. But in peace, as in idleness, such matters dropout of mind, unless systematic provision is made for keeping them in view. *Id.*, at 5-6.

Mahan earlier observed that new weapons and new technologies had no effect on principles and found instead a confirmation of the Swiss strategist, Jomini, and his "dictum" that "changes in weapons affect practice, but not principles." *Id.*, at 4.

131. *Id.*, at 2.

132. *Id.*, at 344. This observation apart from the application to this paper bears upon those who are proposing various measures for naval arms control, and the elimination of naval facilities abroad. Such controls would destabilize a global power situation replacing the deterrence inherent in the navy with the uncertainties of future action. They would divorce the ability of the United States to protect interests that demand the protection of the navy, and the assertion of interests that also demand its projection or presence.

Mahan also considers the navy in terms of offensive and defensive use, suggesting a distinction, but a distinction arising from how the forces are used, not on the basis of the weapons they carry:

When war exists between two nations separated by the sea, it is evident that the one which invades territory occupied by the other takes the offensive and that the instrument of offense is the arm which carries on the invasion, that is, the army. The navy preserves, and assures, the communications of the army. That the navy alone makes invasion possible, does not make it the invading force. That it alone make the offensive possible, does not make it the offensive arm. That its own mode of action is offensive does not necessarily constitute it the offensive factor in a combined operation. In the joint action it takes the defensive. That, in pursuit of this defensive role, it takes continual offensive action whenever opportunity offers to destroy an enemy's ships, does not alter the essential character of its operations. It defends by offensive action, wherever its guns reach; but it defends. *Id.*, at 432-433.

133. *Id.*, at 447. He then immediately added, referring first to the necessities of military interest supported by "a widespread, deeply rooted, civil interest:"

To prepare for war in time of peace is impracticable to commercial representative nations, because the people in general will not give sufficient heed to military necessities, or to international problems, to feel the pressure which induces readiness. All that naval officers can do is to realize to themselves vividly, make it a part of their thought, that a merchant shipping is only one form of many which the external relations of a country can assume.

134. From Sun Tzu, *The Art of War*, 73 - para. 3 (Samuel B. Griffith, trans., 1963).

135. Clausewitz *supra* note 125, at 97. A commentator adding a gloss to Sun Tzu also-refers to the costs in scarce resources quickly consumed by war: "Now when the army marches abroad, the treasury will be emptied at home." And Sun Tzu: "when the army engages in protracted campaigns the resources of the state will not suffice . . . For there has never been a protracted war from which a country has benefitted." *Id.*, at 72, 73. And "those unable to understand the dangers inherent in employing troops are equally unable to understand the advantageous ways of doing so." For an analysis of the differing perspectives of strategy see Col. Richard M. Swain, *The Hedgehog and the Fox: Jomini, Clausewitz, and History*, Nav. War Coll. Rev. 98-109 (Autumn 1990).

136. Clausewitz observed that war-making might be either by military forces or by negotiation, stressing that the first affords the means to dictate the terms of termination to the conquered enemy, while the second enables military [and political] compromise, and even anticipates it:

War can be of two kinds, in the sense that either the objective is to overthrow the enemy, to render him politically helpless or militarily impotent or [by appropriate military tactics] for bargaining at the peace negotiations . . . But no less practical is the importance of another point that must be made absolutely clear, namely that war is nothing but the continuation of policy with other means. *Id.*, at 69.

137. In an extensive analysis of the community sanctioning process, McDougal and Feliciano, *supra* note 8, at ch. 4, point out:

Economic strategy seeks to affect all phases – production, conservation, distribution, consumption – of wealth processes. It is concerned with methods of and facilities for managing a flow of capital, goods, and services across national boundaries. *Id.*, at 322.

The sanctioning goals are described as “prevention” [*i.e.*, of conditions harmful to minimum order], “restoration” [of the targeted violator state to become an acceptable member of the global order, and terminate its unlawful coercion], and “rehabilitation” and “reconstruction” [aimed at providing relief for the damage caused by the sanctions]. *Id.*, at 322–329. In a earlier work McDougal noted that though the global order has no “centralized executive organ”, sanctions, *i.e.*, defined as “implementing techniques or available base values”, are at the disposal of states or the general community of states for securing reasonable conformity in the conduct of states to inclusive [or community] prescriptions.

138. Resolution on the Definition of Aggression, reprinted in 12 I.L.M. 710 (1974); such acts are not condemned by the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United States, reprinted in 9 I.L.M. 1292 (1970).

139. The extent to which a victor will assume the costs of restoring or assisting a former and defeated belligerent is a matter of judgment, coupled with the larger policy in imposing the terms of peace. According to Thomas C. Schelling, war is an instrument that involves bargaining, and the bargaining position of the rivals will depend upon the choices made, and the choices forces upon, each side:

If war to the finish has become inevitable, there is nothing left but pure conflict; but if there is any possibility of avoiding a mutually damaging war, of conducting warfare in a way that minimizes damage, or of coercing an adversary by threatening war rather than waging it, the possibility of mutual accommodation is as important and dramatic as the element of conflict. Concepts like deterrence, limited war, and disarmament, as well as negotiation, are concerned with the common interest and mutual dependence that can exist between participants in a conflict . . . To study the strategy of conflict is to take the view that most conflict situations are essential bargaining situations. They are situations in which the ability of one participant to gain his ends is dependent to an important degree on the choices or decisions that the other participant will make. Thomas C. Schelling, *The Strategy of Conflict* 5 (pbk ed., 1968).

140. The citations and quotations used in the paper come from David H.N. Johnson, *Rights in Airspace* ch. 4 (1965). Professor Johnson provides the citations to the quotations.

141. *Id.*, at 45; *cf.* Clausewitz, *supra* note 125, at 97, who stated that combat objectives were to destroy the military forces of the enemy, but to build upon this outcome to achieve political goals.

142. Johnson cites Sir Arthur Harris to the effect that deaths from Allied bombing of Germany were 305,000 and from the blockade in the First World War were 800,000. Johnson, *supra* note 140, at 53.

143. *Id.*, at 52. Churchill was clearly reflecting the experience of the aftermath of the first World War. Johnson notes that Sir Arthur Harris, in charge of the air command at the end of the war, had so accelerated the attacks on the cities that he was refused a peerage like other Service chiefs, and that the political figures, including Churchill, sought to turn away from him and his actions.

144. Geneva Protocol, I., publication of the International Committee of the Red Cross, Geneva, 1977. Article 51. Other articles in Protocol I are supportive of this prohibition. Reprisals are forbidden. Cultural objects are protected, along with places of worship. *See* Part IV.

145. *See* Meehan, *supra* note 116, at 226. Judgment “is somewhat amorphous, difficult to isolate, yet analytically necessary to account for human performance . . . Unfortunately, the only test of judgment is another judgment, and if informed judgments conflict, there is no way to resolve the difference pending further evidence of additional reasoning.”

146. The large number of Security Resolutions with regard to Iraq is an indication of the step-wise movement in the global community in imposing coercion through sanctions; although there is room to claim that the resolutions might permit the use of force, disputes exist between the United States and the Soviet Union as to the correct interpretation. Resolution 669 refers to preceding resolutions 660–662, 664, 666, and

667, all adopted in 1990, but spread over a four month's period. Past experience with the Security Council would suggest that if the use of force is to be directed, it must be expressed in blunt language, and therefore the states in the Council will leave none of the resolution to individual interpretation.

147. The resolutions as adopted are set forth in the recently initiated publication of the Department of State: DISPATCH. See those set forth in Vol. 1, Nos 2, 4. At the time of writing this paper a resolution is being proposed that will permit or direct the use of force against Iraq. The operative language from Resolution 661 (August 6, 1990) Dispatch 75 (September 10, 1990) states:

[The Security Council] 4. Decides that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payment exclusively for strictly medical or humanitarian purposes and in humanitarian circumstances, foodstuffs.

The expression "short of war" is ambiguous. States exercise a variety of measures applying or dependent upon coercion. When and how they finally go to war has become uncertain in global situations where most states would prefer to correct wrongs by force on an economical basis, but without the costs and incalculable risks of warfare.

148. In U.S. Dept of State, Dispatch, September 10, 1990, p. 76.

149. For an assessment of economic sanctions in general including those of peacetime, see Margaret P. Doxey, *Economic Sanctions and International Enforcement* (2d ed., 1980); *Dilemmas of Economic Coercion* 217 (Miroslav Nincic & Peter Wllenstein, eds., 1983), observing that such sanctions must reach the political base, and the constitutive rules and ideology of a social order in order to be effective. M. S. Daoudi & M. S. Dajani, *Economic Sanctions* (1983), conclude that the sanctions do not work. Doxey summarizing Medicott's findings states that the five main fields of achievement in World War II were:

1. The drastic limitation of German imports from nonEuropean sources, reduced after November 1942 to the small, desperate contribution of the blockade runners; 2. The creation of encirclement neurosis with marked effect on German political and military strategy; 3. The direct hampering of the Axis armament effort by the creation of raw material shortages; 4. The indirect hampering of the Axis wartime economy by additional strains on transport and manpower; and 5. The strengthening of neutral resistance to Axis pressure by economic aid, by the constant evidence of Allied determination, and by threats of retaliation, immediate or delayed. Although the Allied effort in economic warfare undoubtedly had its effect in weakening Germany's war potential and capacity and contributed to her eventual defeat, it is not contended, or generally considered that it was a decisive factor at any stage.

150. Uniting for Peace Resolution, November 3, 1950. G.A. Res. 377A(V), 5 U.N. GAOR, Supp. No.20, at 10, U.N. Doc. A/1775 (1951). The General Assembly resolved to make recommendations for "collective measures" including the use of force "when necessary, to maintain or restore international peace and security." The International Court of Justice approved the resolution notwithstanding the provisions of the Charter conferring what amounted to exclusive jurisdiction on the Security Council as to these matters: *Certain Expenses of The United Nations*, [1962] I.C.J. 150.

151. See Colombos, *supra* note 88, at 836.

152. The Budapest Articles of Interpretation, quoted by Robert H. Jackson, *supra* note 36, 35 Am. J. Int'l L. at 355, indicate the shift of the attitudes toward neutrality that had occurred among states that accepted the articles at the time of the Kellogg-Briand Pact. They said in part:

WHEREAS by their participation in the Pact sixty-three States have abolished the conception of war as a legitimate means of exercising pressure on another State in the pursuit of national policy and have also renounced any recourse to armed force for the solution of international disputes of conflicts:

(1) A signatory State cannot, by denunciation or non-observance of the Pact, release itself from its obligations thereunder; (2) a signatory State which threatens to resort to armed force for the solution of an international dispute or conflict is guilty of a violation of the Pact; (3) a signatory State which aids a violating State thereby itself violates the Pact; (4) in the event of a violation of the Pact by a resort to armed force or war by one signatory State against another, the other States may, without thereby committing a breach of the Pact or of any rule of International Law, do all or any of the following things: (a) refuse to admit the exercise by the State violating the Pact of belligerent rights, such as visit and search, blockade, etc.; (b) decline to observe towards the State violating the Pact the

duties prescribed by International Law, apart from the Pact, for a neutral relation in relation to a belligerent; (c) supply the State attacked with financial or material assistance including munitions of war; (d) assist with armed forces the State attacked; (5) The signatory States are not entitled to recognize as acquired de jure any territorial or other advantages acquired de facto by means of a violation of the Pact; (6) A violating State is liable to pay compensation for all damage caused by a violation of the Pact to any signatory State or to its nationals; (7) The Pact does not affect such humanitarian obligations as are contained in general treaties [naming the Geneva and Hague Conventions].

Though not approved by all states their impact is clear from the number that signed.

153. The Inter-American Maritime Neutrality Convention, signed at Havana, February 20, 1928, in Leon Friedman, 1 *The Law of War* 457 (1972) illustrates the tendency of belligerent practice and diplomatic practice to diverge, because it favors the neutral countries over what the belligerents accept in their practice. Too large a gap between the law of the diplomats and the law that develops in practice leads ultimately to the former, or treaty law, being set aside. *Cf.* the experience of the arms control agreements where the United States Senate found the agreements were out of step with the perceptions of the State as to what best might assure the security of the United States.

154. Ample examples exist of trends in the past in which treaties and agreements have been drafted and have never come into effect. The Declaration of London, 1909, the Hague Rules on Air Warfare, the numerous treaties and conventions with limited duration, the Geneva Protocols of 1977, the Washington Conferences and the law they attempted to impose, and even in the related area of arms control the SALT and other agreements have provided us with instruments that could be negotiated, even signed, but never ratified. The Harvard Draft agreements on various aspects of force: neutrality, piracy, and so on have been valuable for the study or inquiry into the existing law, but the law itself remains as in the past, largely the outcome of the practice of states.

155. War may require deliberations, preparations and intelligence greater by far than that invoked in the past if the intention is to reduce the costs and burdens that inevitably arise. The Chinese strategist observed:

War is a matter of vital importance to the State; the province of life or death; the road to survival or ruin. It is mandatory that it be thoroughly studied.

Sun Tzu, *supra* note 134, at 63. The gloss on this maxim by another Chinese writer declared:

Weapons are tools of ill omen. War is a grave matter; one is apprehensive lest men embark upon it without reflection.

Sun Tzu subsequently observed that "what is of supreme importance in war is to attack the enemy's strategy," and by this he included the enemy's capabilities, thus providing under modern warfare the opportunities of economic warfare. Should the shift go to strategic attacks on cities, however, it would run afoul of the maxim to refrain from an attack on cities: "Attack cities only when there is no alternative." *Id.*, at 77, 78. Protracted warfare in itself, according to Sun Tzu, is a form of economic deprivation, ultimately undermining the capability of maintaining the offensive or the attack. *Id.*, at 72-74. Hence,

Those unable to understand the dangers inherent in employing troops are equally unable to understand the advantageous ways of doing so . . . Those adept in waging war do not require a second levy of conscripts nor more than one provisioning. *Id.*, at 73.

156. The seizure of the crisis by the Security Council does not waive a state's claim to self defense or collective self defense: these call for separate, often differing perceptions as to threat and response. However, the Security Council's competence has a major impact upon neutrality when it does decide or act. Unfortunately, United Nations practice so far provides us with little in the way of useful content. The current Middle East Crisis indicates the difficulty in reaching appropriate resolutions to curtail the aggression of Iraq.

157. According to McDougal and Feliciano:

A sufficiently flexible test of the crucial intensity and scope [of violence or force under Article 2(4) of the UN Charter] may be reached, we suggest, by considering the impact of the coercion exercised upon the expectation structure of the target state. In these terms, the key effect is creation in the target state of reasonable expectations, as third party observers may determine reasonableness, that it must forthwith respond with exercises of military force if it is to maintain its primary values, customarily described as "territorial integrity and political independence." McDougal and Feliciano, *supra* note 8, at 200.

The widening demand to refrain from economic coercion appears in the guidelines laid down in the "Helsinki Accords," to wit, "To refrain from any act of economic coercion designed to subordinate to their own interests the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind." Final Act of the Conference on Security and Cooperation in Europe, Helsinki, Aug. 1, 1975, *reprinted in* 12 I.L.M. 1292 (1975). Similarly, see the duty of states to cooperate in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, Oct. 24, 1970, *reprinted in* 9 I.L.M. 1292 (1970).

158. On the prospects of air blockade see Lt. Thomas A. Varallo, U.S. Nav. Inst. Proc. 19 (December 1990); he considers this modality of attack and also the general article by Adm E. W. Carter, on blockade, *id.*, (November 1990), at 42-47. Varallo argues from an operational perspective that "almost all the economic flow depends on the sea, and this will not change in the near future. Despite modern communications, however, many business transactions rely heavily on air travel. An effective air blockade could indirectly affect a country's economy, although in a less dramatic fashion than [sic, than?] a naval blockade." But he argues that the "more likely scenario" for such an air blockade is during "peacetime."

159. The problem of "strategic deterrence" and ultimately of "strategic defense" is one that embraces both peacetime actions to fend off future conflicts and the possibility of wartime attacks on strategic objectives. Economic methods of warfare might better be identified as affirmative actions or as reactive actions instead of referring to them as "offensive" or "defensive."

160. An interesting problem arises here: who and under what circumstances decides the interpretation and application of the Security Council directives. Ambiguity is inherent in external affairs, created by states, if necessary, where their policies are to be served.

161. The SALT agreements were ambiguous: submarine launched ballistic missiles are included as "strategic offensive weapons," and only the land-based weapons that reach the territory of the other state are included, but this becomes confusing because the agreement then limits such weapons to those with a range of 5000 kilometers.

162. Hence the Western countries were able to consider the espionage and industrial theft by the Soviet Union and other communist countries as unfriendly behavior during peacetime, subject to their criminal law, but are likely to treat such conduct as hostile behavior, subject to reprisals or other actions to counter them during wartime.

163. See the prefatory remarks to these conclusion. Discussion in the paper has not extended to the changing face of neutrality in depth. See McDougal and Feliciano, *supra* note 8, at ch. 5. The conditions leading to change but not certainty include: (1) a major change leading to community prohibitions against coercion and violence under all circumstances; (2) the organization of the global community such that made the community the objective of protection and limited the neutrality principle of impartiality so that discriminatory treatment could be afforded the victims of aggression, identified as members of a global order that was being impaired; (3) the rising expectations of the involved states as claimants that resort is to be made to collective security, and that security is to be protected from attack. *Id.* at 397-400.

164. Much of this conclusion is to be seen in the decisions at Nuremberg: submarines were not declared even with an open attack campaign as engaged in illegal warfare; strategic bombing of cities and the use of the nuclear weapons were not condemned; substantial burning and destruction of the land under a scorched earth policy were not the subject of indictment. Broad, general principles were pronounced, but the application of principle, directly, or through rule, to the events does not appear. The crimes were vaguely stated: crimes against "peace;" crimes against "humanity;" and crimes of "aggression."

165. The anticipatory law appears in Geneva Protocols of 1977, I.C.R.C., Geneva, 1977, especially in Protocol I where the ratifying states have undertaken to take steps to protect the natural environment, refrain from reprisals against it, to protect their own citizens by isolating them from major military targets, and so on. See articles 35, 36, 55, 57, 58. Anticipatory law and general principles of law thus may provide the general guidelines, as was shown in the foremost of the principles that appeared in the deMartens Clause added to the Hague Convention IV of 1907.

166. Cf. Myres S. McDougal, *et al.*, in Myres S. McDougal & W. Michael Reisman, Power and Policy in Quest of Law 353 (1985); effective power, made authoritative, is a ubiquitous aspect of all social processes, an indispensable component of law. While naked power rarely rears its head without some relation to authority, its presence and effect on decision must always be taken into account. The important fact is that it is effective power, taken as a whole and commonly comprised of both authority and control, that establishes and maintains processes of authoritative decision, both constitutive and public order, and hence affects the fundamental policies expressed in all law.

167. Cf. Julian S. Corbett, Some Principles of Maritime Strategy 90 (1972):

Command of the sea, therefore, means nothing but the control of maritime communications, whether for commercial or military purposes. The object of naval warfare is the control of communica-

tions, and not, as in land warfare, the conquest of territory. The difference is fundamental. True, it is rightly said that strategy ashore is mainly a question of communications, but they are communications of the army alone, and not to the wider communications which are part of the life of the nation.

This perspective, though enlarged by strategic economic warfare, based in part on sea platforms, contains an additional perspective: naval arms control for a state dependent upon communications and therefore command of the sea is entirely different from a land-based state like the Soviet Union in its interests and the needs of its strategy. States that have command of the sea dispersing that command to others will be shifting from the stable equilibrium enjoyed to one of instability. Command of the sea is a complex question of targets, missions and responsibilities, weapons and sea platforms. *See generally*, Corbett, for his discussion of "commerce prevention" (used in place of "commerce destruction") as part of control of communications. But he says that battles are intended ultimately "to exert pressure on the citizens and their collective life." *Id.* at 94.

168. Rules of engagement and operating principles have two features: the commander in the situation demanding action must act consistent with international law [and the rules to this end give him guidance], and that under the peacetime rules he must report immediately to higher authority and seek guidance prior to the use of armed force wherever practicable. *See* Annotated Supplement To The U.S. Department of the Navy, Office of the Judge Advocate General, Commander's Handbook on The Law of Naval Operations, (NWP 9) (REV. A)/FMFM 1-10, 1987, at para. 3.1. [*hereinafter*, Annotated Supplement] The rules are promulgated by the Joint Chiefs of Staff, *see id.*, at para. 3.11.1. The distinction of peacetime and wartime rules are given in para. 5.5.1:

[Peacetime rules] provide the authority for and limitations on actions taken in self-defense during peacetime and periods short of prolonged armed conflict, for the defense of U.S. forces, the self-defense of the nation and its citizens, and the protection of U.S. national assets worldwide. Wartime rules of engagement, on the other hand, reaffirm the right and responsibility of the operational commander generally to seek out, engage, and destroy enemy forces consistent with national objectives, strategy, and the law of armed conflict.

*Cf.* J. Ashley Roach, *Rules of Engagement*, Nav. War Coll. Rev. 43-53 (January - February 1983).

And in para. 5.5 it is pointed out that the rules at a national or strategic level are promulgated to guide commanders in the use of force toward the achievement of broad national objectives; at the tactical level are "task oriented and frequently mission-oriented."

At all levels, U.S. wartime rules of engagement are influenced by, and are consistent with, the law of armed conflict. The law of armed conflict provides the general framework within which U.S. rules of engagement during hostilities are formulated. Because rules of engagement also reflect operational, political and diplomatic factors, they often restrict combat operations far more than do the requirements of international law.

But "a principal tenet of those ROE [*i.e.*, peacetime] is the responsibility of the commander to take all necessary and appropriate action for his unit's self defense." Annotated Supplement, *supra*, at 4.3.2.2.

169. For the use of a cost and risk calculus by Mao in his considerations for intervention to assist North Korea in the Korean War of 1950, *see* the two telegrams published in the *N. Y. Times*, February 26, 1992, at A8. Mao advised Stalin that "we have decided to send part of the armed forces into Korea, under the title of Volunteer Army, to do combat with the forces of America." Mao insisted that this went to his vital interests, because if the Americans were to occupy all of Korea, it will be a disaster for "Korean revolutionary power." Mao then balanced out the chances and the necessities that would ensure those chances for success in terms of the military forces and equipments needed [he wanted four times the troop strength, and one and half to two times the fire power to oppose the American Eighth Army]. He would then include two backup armies for a "second and third wave of military forces to assist Korea." With these requirements met, "they will assuredly, cleanly and thoroughly destroy the one Army of the enemy." Mao in his telegram to Zhou Enlai stressed the political necessity, *i.e.*, that this "active policy" would be "extremely advantageous for China, Korea and the world." And a failure to do so would be disadvantageous:

In summation, we think we should enter the war, we must enter the war. Entering the war will have great benefits, and the harm inflicted by not entering the war would be great.

170. As noted in the author's paper, *supra* n. 1, the conclusion that is reached is that of evolving law and evolving belligerent practice:



As wars intensify with strikes or continuing attacks at a rival's economy, even these military strikes can be appraised as forms of economic warfare, because they reduce the capacity of the economy to sustain the war effort. But if this is done, such a switch in perspective would lead to new formulations of the conflict's objectives, most likely involving a switch from military to political formulae, and creating a tendency towards vagueness, ambiguity and uncertainty in their formulation. The perspectives of the belligerents would lead away from the military strategies once non-military participants take control of the conflict, and away from the objectives that have traditionally been sought in armed conflict. *Id.* at 670.

171. 1 Winston Churchill, *The War Speeches of the Rt. Hon. Winston S. Churchill* 300 (Charles Eade ed., 1953).